Assembly Bill No. 1517

CHAPTER 190

An act to amend Section 17511.1 of the Business and Professions Code, to amend Sections 1632.5, 1748.13, 1789.12, 1812.201, and 2923.3 of the Civil Code, to amend Sections 1101.1, 2207, 2510, 3100, 17713.12, 25003, 25018, 25100, 25207, 25243.5, 25247, 25254, 25401, 25604, 25607, 25612.5, 25614, 25702, 29542, 31408, 31503, and 31513 of the Corporations Code, to amend Sections 620, 622, 1070, 2105, 4057, 12104, 17210.2, 17214, 17311, 17320, 17331, 18405, 22105.1, 22159.5, 22160, 22756, 23070, 23071, 23072, 23073, 23074, 23102, 30217, 50140, 50303, 50307.1, and 50316.5 of, to amend the heading of Article 4 (commencing with Section 670) of Chapter 7 of Division 1 of, and to repeal Section 1008 of, the Financial Code, to amend Sections 5970, 6254.5, 6254.12, 6254.22, 11840, 53344.1, 53638, and 54956.87 of the Government Code, to amend Sections 1280.7, 12693.35, 14053, and 15036 of the Insurance Code, to amend Section 4600.5 of the Labor Code, to amend Section 11604.5 of the Probate Code, to amend Section 408 of the Revenue and Taxation Code, and to amend Section 22005.1 of the Welfare and Institutions Code, relating to business.

[Approved by Governor August 12, 2015. Filed with Secretary of State August 12, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1517, Committee on Banking and Finance. Business.

(1) Existing law abolished the Department of Corporations and the Department of Financial Institutions and transferred their responsibilities to the Department of Business Oversight, which is headed by a Commissioner of Business Oversight.

This bill would transfer additional duties from the abolished Department of Corporations and the abolished Department of Financial Institutions to the Department of Business Oversight and the Commissioner of Business Oversight, as specified, as well as the Department of Managed Health Care. This bill would also update cross-references and outdated contact information with respect to the Department of Business Oversight.

(2) Existing law, the Corporate Securities Law of 1968, makes it unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to employ a device, scheme, or artifice to defraud, make an untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, or engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

This bill would instead make it unlawful for any person to offer or sell a security in this state, or to buy or offer to buy a security in this state, by means of any written or oral communication that includes an untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading.

Existing law, the Corporate Securities Law of 1968, requires the offer and sale of securities in the state to be qualified with the Commissioner of Business Oversight, unless exempt. That law exempts specific securities or transactions from qualification, including, among others, any security issued or guaranteed by a public utility holding company, as specified.

This bill would revise this exemption to exempt any security issued or guaranteed by a public utility holding company that is regulated in respect to its rates and charges by the United States or a state, and delete obsolete cross-references.

This bill would also update and delete obsolete cross-references to federal law in the Corporate Securities Law of 1968.

(3) Existing law limits the amount of funds of a bank or trust company that are deposited in any other financial institution, as specified, unless the financial institution has been designated as a depositary for the funds of the depositing bank or trust company by a vote of the majority of the directors of the depositing bank or trust company and the financial institution has been approved by the commissioner as a depositary for the purposes of these provisions.

This bill would repeal these provisions.

(4) Existing law, the Banking Law, prescribes the conditions pursuant to which a state-chartered bank may engage in the practice of banking. Existing law requires a bank to have authorization to open an office. Existing law defines core and noncore banking business and defines a facility, in this context, as an office in this state at which a bank engages in noncore banking business but not core banking business.

This bill would delete the phrase “in this state” from the definition of a facility, as described above.

(5) Existing law requires an industrial loan company to annually file with the Commissioner of Business Oversight an audit report containing audited financial statements and other relevant information the commissioner may require relating to the company. Existing law further requires an industrial loan company whose certificate has been surrendered or revoked to submit to the commissioner a closing audit report containing audited financial statements, as specified.

This bill would repeal the requirement for the closing audit report.

(6) This bill would also make technical changes and corrections.

The people of the State of California do enact as follows:

SECTION 1. Section 17511.1 of the Business and Professions Code is amended to read:

17511.1. As used in this article, "telephonic seller" or "seller" means a person who, on his or her own behalf or through salespersons or through the use of an automatic dialing-announcing device, as defined in Section 2871 of the Public Utilities Code, causes a telephone solicitation or attempted telephone solicitation to occur which meets the criteria specified in subdivision (a), (b), (c), or (d) and who is not exempted by subdivision (e), as follows:

(a) A telephone solicitation or attempted telephone solicitation wherein the telephonic seller initiates telephonic contact with a prospective purchaser and represents or implies one or more of the following:

(1) That a prospective purchaser who buys one or more items will also receive additional or other items, whether or not of the same type as purchased, without further cost. For purposes of this subdivision, "further cost" does not include actual postage or common carrier delivery charges, if any.

(2) That a prospective purchaser will receive a prize or gift, if the person also encourages the prospective purchaser to do either of the following:

(A) Purchase or rent any goods or services.

(B) Pay any money, including, but not limited to, a delivery or handling charge.

(3) That a prospective purchaser is able to obtain any item or service at a price which the seller states or implies is below the regular price of the item or service offered. This paragraph shall not apply to retailers who, within the previous 12 months, have sold a majority of their goods or services through in-person sales at retail stores.

(4) That a prospective purchaser who buys office equipment or supplies will, because of some unusual event or imminent price increase, be able to buy these items at prices which are below those that are usually charged or will be charged for the items.

(5) That the seller is a person other than the person he or she is.

(6) That the items for sale are manufactured or supplied by a person other than the actual manufacturer or supplier.

(7) That the seller is offering to sell the prospective purchaser any gold, silver, or other metals, including coins, diamonds, rubies, sapphires, or other stones, coal or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, or any other investment opportunity of any type whatsoever.

(8) That the seller is offering to make a loan, or to arrange or assist in arranging a loan or to assist in providing information which may lead to the obtaining of a loan, unless no payment of any kind is made until the loan proceeds are disbursed to the borrower.

(9) That a prospective purchaser will receive a credit card, as defined in subdivision (a) of Section 1747.02 of the Civil Code, if the purchaser pays an upfront or preapplication fee for the credit card to the telephonic seller.

(b) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by unrequested notifications sent by the seller to persons who have not previously purchased goods or services from the seller or who have not previously requested credit from the seller, to a prospective purchaser wherein the seller represents or implies to the recipient of the notification that any of the following applies to the recipient:

(1) That the recipient has in any manner been specially selected to receive the notification or the offer contained in the notification.

(2) That the recipient will receive a prize or gift if the recipient calls the seller.

(3) That if the recipient buys one or more items from the seller, the recipient will also receive additional or other items, whether or not of the same type as purchased, without further cost or at a cost which the seller states or implies is less than the regular price of such items.

However, this subdivision does not apply to the solicitation of sales by a catalog seller who periodically issues and delivers catalogs to potential purchasers by mail or by other means. This exception only applies if the catalog includes a written description or illustration and the sales price of each item of merchandise offered for sale, includes at least 24 full pages of written material or illustrations, is distributed in more than one state, and has an annual circulation of not less than 250,000 customers.

(c) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by advertisements on behalf of the telephonic seller wherein it is represented or implied that the seller is offering to sell to the prospective purchaser any gold, silver, or other metals, including coins, diamonds, rubies, sapphires, or other stones, coal or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, or any other investment opportunity of any type whatsoever.

(d) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by advertisements on behalf of the telephonic seller wherein it is represented or implied that the seller is offering to make a loan or to arrange or assist in arranging a loan or to assist in providing information which may lead to the obtaining of a loan, unless no payment of any kind is made until the loan proceeds are disbursed to the borrower.

(e) For purposes of this article, “telephonic seller” or “seller” does not include any of the following:

(1) A person offering or selling a security qualified under Section 25110, 25120, or 25130 of the Corporations Code or exempt from qualification under Chapter 1 (commencing with Section 25100) of Part 2 of Division 1 of Title 4 of the Corporations Code. The fact that a notice claiming an exemption under the Corporate Securities Law of 1968 is filed with the Department of Business Oversight does not create an exemption under this paragraph.

(2) A person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4, when the solicited transaction is governed by that law.

(3) A person licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3, when the solicited transaction is governed by that law.

(4) A person licensed or certificated pursuant to Part 2 (commencing with Section 680) of Division 1 of the Insurance Code, including a person licensed pursuant to Chapter 5 (commencing with Section 1621) thereof, when the solicited transaction is governed by that law.

(5) A person offering or selling a franchise registered pursuant to Section 31110 of the Corporations Code or exempt from registration under Chapter 1 (commencing with Section 31100) of Part 2 of Division 5 of Title 4 of the Corporations Code. The fact that a notice claiming an exemption under the Franchise Investment Law is filed with the Department of Business Oversight does not create an exemption under this paragraph.

(6) A person soliciting the sale of a seller assisted marketing plan, as defined in Title 2.7 (commencing with Section 1812.200) of Part 4 of Division 3 of the Civil Code, who has filed with the Attorney General the documents required by Section 1812.203 of the Civil Code.

(7) A person primarily soliciting the sale of a newspaper of general circulation, as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code, a magazine, or membership in a book or record club whose program operates in conformity with the requirements of Section 1584.5 of the Civil Code.

(8) A person soliciting business from prospective purchasers who have previously purchased from the business enterprise for which the person is calling.

(9) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation but completes the sales presentation at a later face-to-face meeting between the solicitor and the prospective purchaser. However, if a seller, directly following a telephone solicitation, causes an individual whose primary purpose it is to go to the prospective purchaser to collect the payment or deliver any item purchased, this exemption does not apply.

(10) Any supervised financial institution or parent, subsidiary, or subsidiary of parent thereof. As used in this paragraph, "supervised financial institution" means any commercial bank, trust company, savings and loan association, credit union, industrial loan company, finance lender or broker, or insurer, provided that the institution is subject to supervision by an official or agency of this state or of the United States.

(11) A person soliciting the sale of a preneed funeral arrangement regulated by Article 9 (commencing with Section 7735) of Chapter 12 of Division 3.

(12) A person licensed pursuant to Chapter 19 (commencing with Section 9600) of Division 3 when acting pursuant to that licensure.

(13) A person soliciting the sale of services provided by a cable television system licensed or franchised pursuant to Section 53066 of the Government Code or any other authority.

(14) A person or an affiliate of a person whose business is regulated by the Public Utilities Commission.

(15) A person soliciting the sale of a commodity pursuant to Part 2 (commencing with Section 58601) of Division 21 of the Food and Agricultural Code, if the solicitation neither intends to, nor actually results in, a sale which costs the purchaser in excess of one hundred dollars ($100).

(16) An issuer or subsidiary of an issuer that has a security listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., if the exchange or interdealer quotation system has been certified by rule or order of the Commissioner of Corporations under subdivision (o) of Section 25100 of the Corporations Code. A subsidiary of an issuer that qualifies for exemption under this paragraph is not itself exempt unless not less than 60 percent of the voting power of its shares is owned by the qualifying issuer or issuers.

(17) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person's employer.

(18) A person soliciting a transaction regulated by the Commodity Futures Trading Commission if the person is registered or temporarily licensed for this activity with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. Sec. 1 et seq.), and the registration or license has not expired or been suspended or revoked.

(19) A person who sells coins or bullion at a price which is not more than 25 percent more than the price at which the seller is concurrently buying the same coins or bullion, if: (A) the seller has had a retail location in California from which he or she has been selling coins or bullion to the public in person for at least three years; (B) the telephonic solicitations are not the person's primary business and sales made telephonically make up less than 20 percent of the person's total retail sales; and (C) the person claiming an exemption pursuant to this subdivision complies with Section 17511.3, as applicable, and subdivision (p) of Section 17511.4.

(20) A person licensed pursuant to Division 1.2 (commencing with Section 2000) of the Financial Code to engage in the business of money transmission if the license has not expired or been suspended or revoked.

(21) A person licensed as a residential mortgage lender or servicer pursuant to Division 20 (commencing with Section 50000) of the Financial Code, when acting under the authority of that license.

(22) A corporation that meets all of the following conditions:

(A) It has been exempt from taxation under Section 23701e of the Revenue and Taxation Code for a minimum of 10 years.

(B) It has maintained its principal purpose for a minimum of 10 years.

(C) It has been incorporated in the state for a minimum of 25 years.

(f) In any civil proceeding alleging a violation of this article, the burden of proving an exemption or an exception from a definition is upon the person

claiming it, and in any criminal proceeding alleging a violation of this article, the burden of producing evidence to support a defense based upon an exemption or an exception from a definition is upon the person claiming it.

(g) Compliance with this article does not satisfy nor substitute for any requirements for license, registration, or regulation mandated by other laws.

SEC. 2. Section 1632.5 of the Civil Code is amended to read:

1632.5. (a) A supervised financial organization that negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, whether orally or in writing, in the course of entering into a contract or agreement for a loan or extension of credit secured by residential real property, shall deliver to the other party to that contract or agreement prior to the execution of the contract or agreement the form described in subdivision (i) for that language.

(b) For purposes of this section:

(1) "Contract" or "agreement" shall have the same meaning as defined in subdivision (g) of Section 1632.

(2) "Supervised financial organization" means a bank, savings association, as defined in Section 5102 of the Financial Code, credit union, or holding company, affiliate, or subsidiary thereof, or any person subject to Division 7 (commencing with Section 18000), Division 9 (commencing with Section 22000), or Division 20 (commencing with Section 50000) of the Financial Code.

(c) (1) With respect to a contract or agreement for a loan or extension of credit secured by residential real property as described in subdivision (a), a supervised financial organization that complies with this section shall be deemed in compliance with Section 1632.

(2) A supervised financial organization that complies with Section 1632, with respect to a contract or agreement for a loan or extension of credit secured by residential real property as described in subdivision (a), shall be deemed in compliance with this section.

(d) The supervised financial organization shall provide the form described in subdivision (i) to the borrower no later than three business days after receipt of the written application, and if any of the loan terms summarized materially change after provision of the translated form but prior to consummation of the loan, the supervised financial organization shall provide an updated version of the translated form prior to consummation of the loan.

(e) (1) This section does not apply to a supervised financial organization that negotiates primarily in a language other than English, as described by subdivision (a), if the party with whom the supervised financial organization is negotiating, negotiates the terms of the contract through his or her own interpreter.

(2) For purposes of this subdivision, "his or her own interpreter" means a person, not a minor, able to speak fluently and read with full understanding both the English language and one of the languages specified in subdivision (a) that is the language in which the contract was negotiated, who is not employed by, and whose services are not made available through, the person engaged in the trade or business.

(f) Notwithstanding subdivision (a), a translated form may retain any of the following elements of the executed English language contract or agreement without translation:

(1) Names and titles of individuals and other persons.

(2) Addresses, brand names, trade names, trademarks, or registered service marks.

(3) Full or abbreviated designations of the make and model of goods or services.

(4) Alphanumeric codes.

(5) Individual words or expressions having no generally accepted non-English translation.

(g) The terms of the contract or agreement which is executed in the English language shall determine the rights and obligations of the parties. However, the translation of the form described in subdivision (i) and required by subdivision (a) shall be admissible in evidence only to show that no contract or agreement was entered into because of a substantial difference in the material terms and conditions of the contract or agreement and the prior translated form provided to the borrower.

(h) (1) A licensing agency may, by order, after appropriate notice and opportunity for hearing, levy administrative penalties against a supervised financial organization that violates any provision of this section, and the supervised financial organization may be liable for administrative penalties, up to the amounts of two thousand five hundred dollars ($2,500) for the first violation, five thousand dollars ($5,000) for the second violation, and ten thousand dollars ($10,000) for each subsequent violation. Except for licensing agencies exempt from the provisions of the Administrative Procedure Act, any hearing shall be held in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the licensing agency shall have all the powers granted under that act.

(2) A licensing agency may exercise any and all authority and powers available to it under any other provisions of law to administer and enforce this section, including, but not limited to, investigating and examining the licensed person’s books and records, and charging and collecting the reasonable costs for these activities. The licensing agency shall not charge a licensed person twice for the same service. Any civil, criminal, and administrative authority and remedies available to the licensing agency pursuant to its licensing law may be sought and employed in any combination deemed advisable by the licensing agency to enforce the provisions of this section.

(3) Any supervised financial organization that violates any provision of this section shall be deemed to have violated its licensing law.

(4) Nothing in this section shall be construed to impair or impede the Attorney General from bringing an action to enforce this division.

(i) The Department of Business Oversight shall create a form to be made available in each of the languages set forth in subdivision (a) for use by a supervised financial organization to summarize the terms of a mortgage

loan pursuant to subdivision (a). In creating the form, the Department of Business Oversight may use as guidance the United States Department of Housing and Urban Development's Good Faith Estimate disclosure form.

(j) This section shall not apply to federally chartered banks, credit unions, savings banks, or thrifts.

(k) Except as otherwise provided in subdivision (h), this section shall not be construed to create or enhance any claim, right of action, or civil liability that did not previously exist under state law, or limit any claim, right of action, or civil liability that otherwise exists under state law.

(*l*) An action against a supervised financial organization for a violation of this section may only be brought by a licensing agency or by the Attorney General.

(m) This section shall become operative beginning on July 1, 2010, or 90 days following the issuance of a form by the Department of Business Oversight pursuant to subdivision (i), whichever occurs later.

SEC. 3. Section 1748.13 of the Civil Code is amended to read:

1748.13. (a) A credit card issuer shall, with each billing statement provided to a cardholder in this state, provide the following on the front of the first page of the billing statement in type no smaller than that required for any other required disclosure, but in no case in less than 8-point capitalized type:

(1) A written statement in the following form: "Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance."

(2) Either of the following:

(A) A written statement in the form of and containing the information described in clause (i) or (ii), as applicable, as follows:

(i) A written three-line statement, as follows:

"A one thousand dollar ($1,000) balance will take 17 years and three months to pay off at a total cost of two thousand five hundred ninety dollars and thirty-five cents ($2,590.35).

A two thousand five hundred dollar ($2,500) balance will take 30 years and three months to pay off at a total cost of seven thousand seven hundred thirty-three dollars and forty-nine cents ($7,733.49).

A five thousand dollar ($5,000) balance will take 40 years and two months to pay off at a total cost of sixteen thousand three hundred five dollars and thirty-four cents ($16,305.34).

This information is based on an annual percentage rate of 17 percent and a minimum payment of 2 percent or ten dollars ($10), whichever is greater."

In the alternative, a credit card issuer may provide this information for the three specified amounts at the annual percentage rate and required minimum payment which are applicable to the cardholder's account. The statement provided shall be immediately preceded by the statement required by paragraph (1).

(ii) Instead of the information required by clause (i), retail credit card issuers shall provide a written three-line statement to read, as follows:

"A two hundred fifty dollar ($250) balance will take two years and eight months to pay off a total cost of three hundred twenty-five dollars and twenty-four cents ($325.24).
A five hundred dollar ($500) balance will take four years and five months to pay off at a total cost of seven hundred nine dollars and ninety cents ($709.90).
A seven hundred fifty dollar ($750) balance will take five years and five months to pay off at a total cost of one thousand ninety-four dollars and forty-nine cents ($1,094.49).
This information is based on an annual percentage rate of 21 percent and a minimum payment of 5 percent or ten dollars ($10), whichever is greater."

In the alternative, a retail credit card issuer may provide this information for the three specified amounts at the annual percentage rate and required minimum payment which are applicable to the cardholder's account. The statement provided shall be immediately preceded by the statement required by paragraph (1). A retail credit card issuer is not required to provide this statement if the cardholder has a balance of less than five hundred dollars ($500).

(B) A written statement providing individualized information indicating an estimate of the number of years and months and the approximate total cost to pay off the entire balance due on an open-end credit card account if the cardholder were to pay only the minimum amount due on the open-ended account based upon the terms of the credit agreement. For purposes of this subparagraph only, if the account is subject to a variable rate, the creditor may make disclosures based on the rate for the entire balance as of the date of the disclosure and indicate that the rate may vary. In addition, the cardholder shall be provided with referrals or, in the alternative, with the "800" telephone number of the National Foundation for Credit Counseling through which the cardholder can be referred, to credit counseling services in, or closest to, the cardholder's county of residence. The credit counseling service shall be in good standing with the National Foundation for Credit Counseling or accredited by the Council on Accreditation for Children and Family Services. The creditor is required to provide, or continue to provide, the information required by this paragraph only if the cardholder has not paid more than the minimum payment for six consecutive months, after July 1, 2002.

(3) (A) A written statement in the following form: "For an estimate of the time it would take to repay your balance, making only minimum payments, and the total amount of those payments, call this toll-free telephone number: (Insert toll-free telephone number)." This statement shall be provided immediately following the statement required by subparagraph (A) of paragraph (2). A credit card issuer is not required to provide this statement if the disclosure required by subparagraph (B) of paragraph (2) has been provided.

(B) The toll-free telephone number shall be available between the hours of 8 a.m. and 9 p.m., Pacific standard time, seven days a week, and shall provide consumers with the opportunity to speak with a person, rather than

a recording, from whom the information described in subparagraph (A) may be obtained.

(C) The Department of Business Oversight shall establish a detailed table illustrating the approximate number of months that it would take and the approximate total cost to repay an outstanding balance if the consumer pays only the required minimum monthly payments and if no other additional charges or fees are incurred on the account, such as additional extension of credit, voluntary credit insurance, late fees, or dishonored check fees by assuming all of the following:

(i) A significant number of different annual percentage rates.

(ii) A significant number of different account balances, with the difference between sequential examples of balances being no greater than one hundred dollars ($100).

(iii) A significant number of different minimum payment amounts.

(iv) That only minimum monthly payments are made and no additional charges or fees are incurred on the account, such as additional extensions of credit, voluntary credit insurance, late fees, or dishonored check fees.

(D) A creditor that receives a request for information described in subparagraph (A) from a cardholder through the toll-free telephone number disclosed under subparagraph (A), or who is required to provide the information required by subparagraph (B) of paragraph (2), may satisfy its obligation to disclose an estimate of the time it would take and the approximate total cost to repay the cardholder's balance by disclosing only the information set forth in the table described in subparagraph (C). Including the full chart along with a billing statement does not satisfy the obligation under this section.

(b) For purposes of this section:

(1) "Credit card" has the same meaning as in paragraph (2) of subdivision (a) of Section 1748.12.

(2) "Open-end credit card account" means an account in which consumer credit is granted by a creditor under a plan in which the creditor reasonably contemplates repeated transactions, the creditor may impose a finance charge from time to time on an unpaid balance, and the amount of credit that may be extended to the consumer during the term of the plan is generally made available to the extent that any outstanding balance is repaid and up to any limit set by the creditor.

(3) "Retail credit card" means a credit card is issued by or on behalf of a retailer, or a private label credit card that is limited to customers of a specific retailer.

(c) (1) This section shall not apply in any billing cycle in which the account agreement requires a minimum payment of at least 10 percent of the outstanding balance.

(2) This section shall not apply in any billing cycle in which finance charges are not imposed.

SEC. 4. Section 1789.12 of the Civil Code is amended to read:

1789.12. As used in this title:

(a) "Credit services organization" means a person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that he or she can or will sell, provide or perform, any of the following services, in return for the payment of money or other valuable consideration:

(1) Improving a buyer's credit record, history, or rating.

(2) Obtaining a loan or other extension of credit for a buyer.

(3) Providing advice or assistance to a buyer with regard to either paragraph (1) or (2).

(b) "Credit services organization" does not include any of the following:

(1) Any person holding a license to make loans or extensions of credit pursuant to the laws of this state or the United States who is subject to regulation and supervision with respect to the making of those loans or extensions of credit by an official or agency of this state or the United States and whose business is the making of those loans or extensions of credit.

(2) Any bank, as defined in Section 102 of the Financial Code, or any savings institution, as specified in subdivision (a) or (b) of Section 5102 of the Financial Code, whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation.

(3) Any person licensed as a prorater by the Department of Business Oversight when the person is acting within the course and scope of that license.

(4) Any person licensed as a real estate broker performing an act for which a real estate license is required under the Real Estate Law (Pt. 1 (commencing with Sec. 10000), Div. 4, B. & P.C.) and who is acting within the course and scope of that license.

(5) Any attorney licensed to practice law in this state, where the attorney renders services within the course and scope of the practice of law, unless the attorney is an employee of, or otherwise directly affiliated with, a credit services organization.

(6) Any broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission where the broker-dealer is acting within the course and scope of the regulation.

(7) Any nonprofit organization described in Section 501(c)(3) of the Internal Revenue Code that, according to a final ruling or determination by the Internal Revenue Service, is both of the following:

(A) Exempt from taxation under Section 501(a) of the Internal Revenue Code.

(B) Not a private foundation as defined in Section 509 of the Internal Revenue Code.

An advance ruling or determination of tax-exempt or foundation status by the Internal Revenue Service does not meet the requirements of this paragraph.

(c) "Buyer" means any natural person who is solicited to purchase or who purchases the services of a credit services organization.

(d) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family, or household purposes.

(e) "Consumer credit reporting agency" means a consumer credit reporting agency subject to the Consumer Credit Reporting Agencies Act, Title 1.6 (commencing with Section 1785.1).

(f) "Person" includes an individual, corporation, partnership, joint venture, or any business entity.

SEC. 5. Section 1812.201 of the Civil Code is amended to read:

1812.201. For the purposes of this title, the following definitions shall apply:

(a) "Seller assisted marketing plan" means any sale or lease or offer to sell or lease any product, equipment, supplies, or services that requires a total initial payment exceeding five hundred dollars ($500), but requires an initial cash payment of less than fifty thousand dollars ($50,000), that will aid a purchaser or will be used by or on behalf of the purchaser in connection with or incidental to beginning, maintaining, or operating a business when the seller assisted marketing plan seller has advertised or in any other manner solicited the purchase or lease of the seller assisted marketing plan and done any of the following acts:

(1) Represented that the purchaser will earn, is likely to earn, or can earn an amount in excess of the initial payment paid by the purchaser for participation in the seller assisted marketing plan.

(2) Represented that there is a market for the product, equipment, supplies, or services, or any product marketed by the user of the product, equipment, supplies, or services sold or leased or offered for sale or lease to the purchaser by the seller, or anything, be it tangible or intangible, made, produced, fabricated, grown, bred, modified, or developed by the purchaser using, in whole or in part, the product, supplies, equipment, or services that were sold or leased or offered for sale or lease to the purchaser by the seller assisted marketing plan seller.

(3) Represented that the seller will buy back or is likely to buy back any product made, produced, fabricated, grown, or bred by the purchaser using, in whole or in part, the product, supplies, equipment, or services that were initially sold or leased or offered for sale or lease to the purchaser by the seller assisted marketing plan seller.

(b) A "seller assisted marketing plan" shall not include:

(1) A security, as defined in the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code), that has been qualified for sale by the Department of Business Oversight, or is exempt under Chapter 1 (commencing with Section 25100) of Part 2 of Division 1 of Title 4 of the Corporations Code from the necessity to qualify.

(2) A franchise defined by the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) that is registered with the Department of Business Oversight or is exempt under Chapter 1 (commencing with Section 31100) of Part 2 of Division 5 of Title 4 of the Corporations Code from the necessity of registering.

(3) Any transaction in which either the seller or purchaser or the lessor or lessee is licensed pursuant to and the transaction is governed by the Real

Estate Law, Division 4 (commencing with Section 10000) of the Business and Professions Code.

(4) A license granted by a general merchandise retailer that allows the licensee to sell goods, equipment, supplies, products, or services to the general public under the retailer's trademark, trade name, or service mark if all of the following criteria are satisfied:

(A) The general merchandise retailer has been doing business in this state continually for five years prior to the granting of the license.

(B) The general merchandise retailer sells diverse kinds of goods, equipment, supplies, products, or services.

(C) The general merchandise retailer also sells the same goods, equipment, supplies, products, or services directly to the general public.

(D) During the previous 12 months the general merchandise retailer's direct sales of the same goods, equipment, supplies, products, or services to the public account for at least 50 percent of its yearly sales of these goods, equipment, supplies, products, or services made under the retailer's trademark, trade name, or service mark.

(5) A newspaper distribution system distributing newspapers as defined in Section 6362 of the Revenue and Taxation Code.

(6) A sale or lease to an existing or beginning business enterprise that also sells or leases equipment, products, supplies, or performs services that are not supplied by the seller and that the purchaser does not utilize with the equipment, products, supplies, or services of the seller, if the equipment, products, supplies, or services not supplied by the seller account for more than 25 percent of the purchaser's gross sales.

(7) The sale in the entirety of an "ongoing business." For purposes of this paragraph, an "ongoing business" means a business that for at least six months previous to the sale has been operated from a particular specific location, has been open for business to the general public, and has had all equipment and supplies necessary for operating the business located at that location. The sale shall be of the entire "ongoing business" and not merely a portion of the ongoing business.

(8) A sale or lease or offer to sell or lease to a purchaser (A) who has for a period of at least six months previously bought products, supplies, services, or equipment that were sold under the same trademark or trade name or that were produced by the seller and, (B) who has received on resale of the product, supplies, services, or equipment an amount that is at least equal to the amount of the initial payment.

(9) The renewal or extension of an existing seller assisted marketing plan contract.

(10) A product distributorship that meets each of the following requirements:

(A) The seller sells products to the purchaser for resale by the purchaser, and it is reasonably contemplated that substantially all of the purchaser's sales of the product will be at wholesale.

(B) The agreement between the parties does not require that the purchaser pay the seller, or any person associated with the seller, a fee or any other

payment for the right to enter into the agreement, and does not require the purchaser to buy a minimum or specified quantity of the products, or to buy products for a minimum or specified period of time. For purposes of this paragraph, a "person associated with the seller" means a person, including an individual or a business entity, controlling, controlled by, or under the same control as the seller.

(C) The seller is a corporation, partnership, limited liability company, joint venture, or any other business entity.

(D) The seller has a net worth of at least ten million dollars ($10,000,000) according to audited financial statements of the seller done during the 18 months preceding the date of the initial sale of products to the purchaser. Net worth may be determined on a consolidated basis if the seller is a subsidiary of another business entity that is permitted by generally accepted accounting standards to prepare financial statements on a consolidated basis and that business entity absolutely and irrevocably agrees in writing to guarantee the seller's obligations to the purchaser. The seller's net worth shall be verified by a certification to the Attorney General from an independent certified public accountant that the audited financial statement reflects a net worth of at least ten million dollars ($10,000,000). This certification shall be provided within 30 days following receipt of a written request from the Attorney General.

(E) The seller grants the purchaser a license to use a trademark that is registered under federal law.

(F) It is not an agreement or arrangement encouraging a distributor to recruit others to participate in the program and compensating the distributor for recruiting others into the program or for sales made by others recruited into the program.

(c) "Person" includes an individual, corporation, partnership, limited liability company, joint venture, or any business entity.

(d) "Seller" means a person who sells or leases or offers to sell or lease a seller assisted marketing plan and who meets either of the following conditions:

(1) Has sold or leased or represents or implies that the seller has sold or leased, whether in California or elsewhere, at least five seller assisted marketing plans within 24 months prior to a solicitation.

(2) Intends or represents or implies that the seller intends to sell or lease, whether in California or elsewhere, at least five seller assisted marketing plans within 12 months following a solicitation.

For purposes of this title, the seller is the person to whom the purchaser becomes contractually obligated. A "seller" does not include a licensed real estate broker or salesman who engages in the sale or lease of a "business opportunity" as that term is used in Sections 10000 to 10030, inclusive, of the Business and Professions Code, or elsewhere in Chapter 1 (commencing with Section 10000), Chapter 2 (commencing with Section 10050), or Chapter 6 (commencing with Section 10450) of Part 1 of Division 4 of the Business and Professions Code.

(e) "Purchaser" means a person who is solicited to become obligated or does become obligated on a seller assisted marketing plan contract.

(f) "Equipment" includes machines, all electrical devices, video or audio devices, molds, display racks, vending machines, coin operated game machines, machines that dispense products, and display units of all kinds.

(g) "Supplies" includes any and all materials used to produce, grow, breed, fabricate, modify, develop, or make any product or item.

(h) "Product" includes any tangible chattel, including food or living animals, that the purchaser intends to:

(1) Sell or lease.

(2) Use to perform a service.

(3) Resell or attempt to resell to the seller assisted marketing plan seller.

(4) Provide or attempt to provide to the seller assisted marketing plan seller or to any other person whom the seller suggests the purchaser contact so that the seller assisted marketing plan seller or that other person may assist, either directly or indirectly, the purchaser in distributing, selling, leasing, or otherwise disposing of the product.

(i) "Services" includes any assistance, guidance, direction, work, labor, or services provided by the seller to initiate or maintain or assist in the initiation or maintenance of a business.

(j) "Seller assisted marketing plan contract" or "contract" means any contract or agreement that obligates a purchaser to a seller.

(k) "Initial payment" means the total amount a purchaser is obligated to pay to the seller under the terms of the seller assisted marketing plan contract prior to or at the time of delivery of the equipment, supplies, products, or services or within six months of the purchaser commencing operation of the seller assisted marketing plan. If the contract sets forth a specific total sale price for purchase of the seller assisted marketing plan which total price is to be paid partially as a downpayment and then in specific monthly payments, the "initial payment" means the entire total sale price.

(*l*) "Initial cash payment" or "downpayment" means that portion of the initial payment that the purchaser is obligated to pay to the seller prior to or at the time of delivery of equipment, supplies, products, or services. It does not include any amount financed by or for which financing is to be obtained by the seller, or financing that the seller assists in obtaining.

(m) "Buy-back" or "secured investment" means any representation that implies in any manner that the purchaser's initial payment is protected from loss. These terms include a representation or implication of any of the following:

(1) That the seller may repurchase either all or part of what it sold to the purchaser.

(2) That the seller may at some future time pay the purchaser the difference between what has been earned and the initial payment.

(3) That the seller may in the ordinary course buy from the purchaser items made, produced, fabricated, grown, bred, modified, or developed by the purchaser using, in whole or in part, the product, supplies, equipment, or services that were initially sold or leased to the purchaser by the seller.

(4) That the seller or a person to whom the seller will refer the purchaser may in the ordinary course sell, lease, or distribute the items the purchaser has for sale or lease.

SEC. 6. Section 2923.3 of the Civil Code is amended to read:

2923.3. (a) With respect to residential real property containing no more than four dwelling units, a mortgagee, trustee, beneficiary, or authorized agent shall provide to the mortgagor or trustor a copy of the recorded notice of default with an attached separate summary document of the notice of default in English and the languages described in Section 1632, as set forth in subdivision (c), and a copy of the recorded notice of sale with an attached separate summary document of the information required to be contained in the notice of sale in English and the languages described in Section 1632, as set forth in subdivision (d). These summaries are not required to be recorded or published. This subdivision shall become operative on April 1, 2013, or 90 days following the issuance of the translations by the Department of Business Oversight pursuant to subdivision (b), whichever is later.

(b) (1) The Department of Business Oversight shall provide a standard translation of the statement in paragraph (1) of subdivision (c), and of the summary of the notice of default, as set forth in paragraph (2) of subdivision (c) in the languages described in Section 1632.

(2) The Department of Business Oversight shall provide a standard translation of the statement in paragraph (1) of subdivision (d), and of the summary of the notice of sale, as set forth in paragraph (2) of subdivision (d).

(3) The department shall make the translations described in paragraphs (1) and (2) available without charge on its Internet Web site. Any mortgagee, trustee, beneficiary, or authorized agent who provides the department's translations in the manner prescribed by this section shall be in compliance with this section.

(c) (1) The following statement shall appear in the languages described in Section 1632 at the beginning of the notice of default:

NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED.

(2) The following summary of key information shall be attached to the copy of the notice of default provided to the mortgagor or trustor:

SUMMARY OF KEY INFORMATION

The attached notice of default was sent to [name of the trustor], in relation to [description of the property that secures the mortgage or deed of trust in default]. This property may be sold to satisfy your obligation and any other obligation secured by the deed of trust or mortgage that is in default. [Trustor] has, as described in the notice of default, breached the mortgage or deed of trust on the property described above.

IMPORTANT NOTICE: IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE

SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until approximately 90 days from the date the attached notice of default may be recorded (which date of recordation appears on the notice).

This amount is _____ as of ___(date)_____and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than three months after this notice of default is recorded) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

_____

(Name of beneficiary or mortgagee)

_____

(Mailing address)

_____

(Telephone)

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

If you would like additional copies of this summary, you may obtain them by calling [insert telephone number].

(d) (1) The following statement shall appear in the languages described in Section 1632 at the beginning of the notice of sale:

NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED.

(2) The following summary of key information shall be attached to the copy of the notice of sale provided to the mortgagor or trustor:

SUMMARY OF KEY INFORMATION

The attached notice of sale was sent to [trustor], in relation to [description of the property that secures the mortgage or deed of trust in default].

YOU ARE IN DEFAULT UNDER A (Deed of trust or mortgage) DATED ____. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE.

IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

The total amount due in the notice of sale is ____.

Your property is scheduled to be sold on [insert date and time of sale] at [insert location of sale].

However, the sale date shown on the attached notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call [telephone number for information regarding the trustee's sale] or visit this Internet Web site [Internet Web site address for information regarding the sale of this property], using the file number assigned to this case [case file number]. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

If you would like additional copies of this summary, you may obtain them by calling [insert telephone number].

(e) Failure to provide these summaries to the mortgagor or trustor shall have the same effect as if the notice of default or notice of sale were incomplete or not provided.

(f) This section sets forth a requirement for translation in languages other than English, and a document complying with the provisions of this section may be recorded pursuant to subdivision (b) of Section 27293 of the Government Code. A document that complies with this section shall not be

rejected for recordation on the ground that some part of the document is in a language other than English.

SEC. 7. Section 1101.1 of the Corporations Code is amended to read:

1101.1. Subdivision (c) of Section 1113 and subdivision (b) of Section 1101 do not apply to any transaction if the Commissioner of Business Oversight, the Insurance Commissioner, or the Public Utilities Commission has approved the terms and conditions of the transaction and the fairness of those terms and conditions pursuant to Section 25142 or Section 1209, 5750, or 5802 of the Financial Code, Section 838.5 of the Insurance Code, or Section 822 of the Public Utilities Code.

SEC. 8. Section 2207 of the Corporations Code is amended to read:

2207. (a) A corporation is liable for a civil penalty in an amount not exceeding one million dollars ($1,000,000) if the corporation does both of the following:

(1) Has actual knowledge that an officer, director, manager, or agent of the corporation does any of the following:

(A) Makes, publishes, or posts, or has made, published, or posted, either generally or privately to the shareholders or other persons, either of the following:

(i) An oral, written, or electronically transmitted report, exhibit, notice, or statement of its affairs or pecuniary condition that contains a material statement or omission that is false and intended to give the shares of stock in the corporation a materially greater or a materially less apparent market value than they really possess.

(ii) An oral, written, or electronically transmitted report, prospectus, account, or statement of operations, values, business, profits, or expenditures, that includes a material false statement or omission intended to give the shares of stock in the corporation a materially greater or a materially less apparent market value than they really possess.

(B) Refuses or has refused to make any book entry or post any notice required by law in the manner required by law.

(C) Misstates or conceals or has misstated or concealed from a regulatory body a material fact in order to deceive a regulatory body to avoid a statutory or regulatory duty, or to avoid a statutory or regulatory limit or prohibition.

(2) Within 30 days after actual knowledge is acquired of the actions described in paragraph (1), the corporation knowingly fails to do both of the following:

(A) Notify the Attorney General or appropriate government agency in writing, unless the corporation has actual knowledge that the Attorney General or appropriate government agency has been notified.

(B) Notify its shareholders in writing, unless the corporation has actual knowledge that the shareholders have been notified.

(b) The requirement for notification under this section is not applicable if the action taken or about to be taken by the corporation, or by an officer, director, manager, or agent of the corporation under paragraph (1) of

subdivision (a), is abated within the time prescribed for reporting, unless the appropriate government agency requires disclosure by regulation.

(c) If the action reported to the Attorney General pursuant to this section implicates the government authority of an agency other than the Attorney General, the Attorney General shall promptly forward the written notice to that agency.

(d) If the Attorney General was not notified pursuant to subparagraph (A) of paragraph (2) of subdivision (a), but the corporation reasonably and in good faith believed that it had complied with the notification requirements of this section by notifying a government agency listed in paragraph (5) of subdivision (e), no penalties shall apply.

(e) For purposes of this section:

(1) "Manager" means a person having both of the following:

(A) Management authority over a business entity.

(B) Significant responsibility for an aspect of a business that includes actual authority for the financial operations or financial transactions of the business.

(2) "Agent" means a person or entity authorized by the corporation to make representations to the public about the corporation's financial condition and who is acting within the scope of the agency when the representations are made.

(3) "Shareholder" means a person or entity that is a shareholder of the corporation at the time the disclosure is required pursuant to subparagraph (B) of paragraph (2) of subdivision (a).

(4) "Notify its shareholders" means to give sufficient description of an action taken or about to be taken that would constitute acts or omissions as described in paragraph (1) of subdivision (a). A notice or report filed by a corporation with the United States Securities and Exchange Commission that relates to the facts and circumstances giving rise to an obligation under paragraph (1) of subdivision (a) shall satisfy all notice requirements arising under paragraph (2) of subdivision (a), but shall not be the exclusive means of satisfying the notice requirements, provided that the Attorney General or appropriate agency is informed in writing that the filing has been made together with a copy of the filing or an electronic link where it is available online without charge.

(5) "Appropriate government agency" means an agency on the following list that has regulatory authority with respect to the financial operations of a corporation:

(A) Department of Business Oversight.

(B) Department of Insurance.

(C) Department of Managed Health Care.

(D) United States Securities and Exchange Commission.

(6) "Actual knowledge of the corporation" means the knowledge an officer or director of a corporation actually possesses or does not consciously avoid possessing, based on an evaluation of information provided pursuant to the corporation's disclosure controls and procedures.

(7) "Refuse to make a book entry" means the intentional decision not to record an accounting transaction when all of the following conditions are satisfied:

(A) The independent auditors required recordation of an accounting transaction during the course of an audit.

(B) The audit committee of the corporation has not approved the independent auditor's recommendation.

(C) The decision is made for the primary purpose of rendering the financial statements materially false or misleading.

(8) "Refuse to post any notice required by law" means an intentional decision not to post a notice required by law when all of the following conditions exist:

(A) The decision not to post the notice has not been approved by the corporation's audit committee.

(B) The decision is intended to give the shares of stock in the corporation a materially greater or a materially less apparent market value than they really possess.

(9) "Misstate or conceal material facts from a regulatory body" means an intentional decision not to disclose material facts when all of the following conditions exist:

(A) The decision not to disclose material facts has not been approved by the corporation's audit committee.

(B) The decision is intended to give the shares of stock in the corporation a materially greater or a materially less apparent market value than they really possess.

(10) "Material false statement or omission" means an untrue statement of material fact or an omission to state a material fact necessary in order to make the statements made under the circumstances under which they were made not misleading.

(11) "Officer" means any person as set forth in Rule 16a-1 promulgated under the Securities Exchange Act of 1934 or any successor regulation thereto, except an officer of a subsidiary corporation who is not also an officer of the parent corporation.

(f) This section only applies to corporations that are issuers, as defined in Section 2 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. Sec. 7201 and following).

(g) An action to enforce this section may only be brought by the Attorney General or a district attorney or city attorney in the name of the people of the State of California.

SEC. 9. Section 2510 of the Corporations Code is amended to read:

2510. "Social purpose corporation subject to the Banking Law" means any of the following:

(a) A social purpose corporation that, with the approval of the Commissioner of Business Oversight, is incorporated for the purpose of engaging in, or that is authorized by the Commissioner of Business Oversight to engage in, the commercial banking business under the Banking Law (Division 1 (commencing with Section 99) of the Financial Code).

(b) Any social purpose corporation that, with the approval of the Commissioner of Business Oversight, is incorporated for the purpose of engaging in, or that is authorized by the Commissioner of Business Oversight to engage in, the industrial banking business under the Banking Law (Division 1 (commencing with Section 99) of the Financial Code).

(c) Any social purpose corporation, other than a social purpose corporation described in subdivision (d), that, with the approval of the Commissioner of Business Oversight, is incorporated for the purpose of engaging in, or that is authorized by the Commissioner of Business Oversight to engage in, the trust business under the Banking Law (Division 1 (commencing with Section 99) of the Financial Code).

(d) Any social purpose corporation that is authorized by the Commissioner of Business Oversight and the Commissioner of Insurance to maintain a title insurance department to engage in title insurance business and a trust department to engage in trust business.

(e) Any social purpose corporation that, with the approval of the Commissioner of Business Oversight, is incorporated for the purpose of engaging in, or that is authorized by the Commissioner of Business Oversight to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19 of Division 1 of the Financial Code.

SEC. 10. Section 3100 of the Corporations Code is amended to read:

3100. (a) A social purpose corporation may sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its assets when the principal terms of the transaction are approved by the board and are approved by an affirmative vote of at least two-thirds of the outstanding shares of each class, or a greater vote if required in the articles, regardless of whether that class is entitled to vote thereon by the provisions of the articles, either before or after approval by the board and before the transaction. A transaction constituting a reorganization shall be subject to Chapter 12 (commencing with Section 1200) of Division 1 and Chapter 10 (commencing with Section 3400) of this division and shall not be subject to this section, other than subdivision (d). A transaction constituting a conversion shall be subject to Chapter 11.5 (commencing with Section 1150) of Division 1 and Chapter 9 (commencing with Section 3300) of this division and shall not be subject to this section.

(b) Notwithstanding approval of two-thirds of the outstanding shares, the board may abandon the proposed transaction without further action by the shareholders, subject to the contractual rights, if any, of third parties.

(c) The sale, lease, conveyance, exchange, transfer, or other disposition may be made upon those terms and conditions and for that consideration as the board may deem in the best interests of the social purpose corporation. The consideration may be money, securities, or other property.

(d) If the acquiring party in a transaction pursuant to subdivision (a) or subdivision (g) of Section 2001 is in control of or under common control with the disposing social purpose corporation, the principal terms of the sale shall be approved by at least 90 percent of the voting power of the disposing social purpose corporation unless the disposition is to a domestic

or foreign other business entity or social purpose corporation, the articles of incorporation of which specify materially the same purposes, in consideration of the nonredeemable common shares or nonredeemable equity securities of the acquiring party or its parent.

(e) Subdivision (d) shall not apply to a transaction if the Commissioner of Business Oversight, the Insurance Commissioner, or the Public Utilities Commission has approved the terms and conditions of the transaction and the fairness of those terms and conditions pursuant to Section 25142, Section 1209 of the Financial Code, Section 838.5 of the Insurance Code, or Section 822 of the Public Utilities Code.

SEC. 11. Section 17713.12 of the Corporations Code is amended to read:

17713.12. (a) A limited liability company is liable for a civil penalty in an amount not exceeding one million dollars ($1,000,000) if the limited liability company does both of the following:

(1) Has actual knowledge that a member, officer, manager, or agent of the limited liability company does any of the following:

(A) Makes, publishes, or posts, or has made, published, or posted, either generally or privately to the shareholders or other persons, either of the following:

(i) An oral, written, or electronically transmitted report, exhibit, notice, or statement of its affairs or pecuniary condition that contains a material statement or omission that is false and intended to give membership shares in the limited liability company a materially greater or a materially less apparent market value than they really possess.

(ii) An oral, written, or electronically transmitted report, prospectus, account, or statement of operations, values, business, profits, or expenditures that includes a material false statement or omission intended to give membership shares in the limited liability company a materially greater or a materially less apparent market value than they really possess.

(B) Refuses or has refused to make any book entry or post any notice required by law in the manner required by law.

(C) Misstates or conceals or has misstated or concealed from a regulatory body a material fact in order to deceive a regulatory body to avoid a statutory or regulatory duty, or to avoid a statutory or regulatory limit or prohibition.

(2) Within 30 days after actual knowledge is acquired of the actions described in paragraph (1), the limited liability company knowingly fails to do both of the following:

(A) Notify the Attorney General or appropriate government agency in writing, unless the limited liability company has actual knowledge that the Attorney General or appropriate government agency has been notified.

(B) Notify its members and investors in writing, unless the limited liability company has actual knowledge that the members and investors have been notified.

(b) The requirement for notification under this section is not applicable if the action taken or about to be taken by the limited liability company, or by a member, officer, manager, or agent of the limited liability company

under paragraph (1) of subdivision (a), is abated within the time prescribed for reporting, unless the appropriate government agency requires disclosure by regulation.

(c) If the action reported to the Attorney General pursuant to this section implicates the government authority of an agency other than the Attorney General, the Attorney General shall promptly forward the written notice to that agency.

(d) If the Attorney General was not notified pursuant to subparagraph (A) of paragraph (2) of subdivision (a), but the limited liability company reasonably and in good faith believed that it had complied with the notification requirements of this section by notifying a government agency listed in paragraph (5) of subdivision (e), no penalties shall apply.

(e) For purposes of this section:

(1) "Manager" means a person defined by subdivision (m) of Section 17701.01 having both of the following:

(A) Management authority over the limited liability company.

(B) Significant responsibility for an aspect of the limited liability company that includes actual authority for the financial operations or financial transactions of the limited liability company.

(2) "Agent" means a person or entity authorized by the limited liability company to make representations to the public about the limited liability company's financial condition and who is acting within the scope of the agency when the representations are made.

(3) "Member" means a person as defined by subdivision (o) of Section 17701.01 that is a member of the limited liability company at the time the disclosure is required pursuant to subparagraph (B) of paragraph (2) of subdivision (a).

(4) "Notify its members" means to give sufficient description of an action taken or about to be taken that would constitute acts or omissions as described in paragraph (1) of subdivision (a). A notice or report filed by a limited liability company with the United States Securities and Exchange Commission that relates to the facts and circumstances giving rise to an obligation under paragraph (1) of subdivision (a) shall satisfy all notice requirements arising under paragraph (2) of subdivision (a) but shall not be the exclusive means of satisfying the notice requirements, provided that the Attorney General or appropriate agency is informed in writing that the filing has been made together with a copy of the filing or an electronic link where it is available online without charge.

(5) "Appropriate government agency" means an agency on the following list that has regulatory authority with respect to the financial operations of a limited liability company:

(A) Department of Business Oversight.

(B) Department of Insurance.

(C) Department of Managed Health Care.

(D) United States Securities and Exchange Commission.

(6) "Actual knowledge of the limited liability company" means the knowledge a member, officer, or manager of a limited liability company

actually possesses or does not consciously avoid possessing, based on an evaluation of information provided pursuant to the limited liability company's disclosure controls and procedures.

(7) "Refuse to make a book entry" means the intentional decision not to record an accounting transaction when all of the following conditions are satisfied:

(A) The independent auditors required recordation of an accounting transaction during the course of an audit.

(B) The audit committee of the limited liability company has not approved the independent auditor's recommendation.

(C) The decision is made for the primary purpose of rendering the financial statements materially false or misleading.

(8) "Refuse to post any notice required by law" means an intentional decision not to post a notice required by law when all of the following conditions exist:

(A) The decision not to post the notice has not been approved by the limited liability company's audit committee.

(B) The decision is intended to give the membership shares in the limited liability company a materially greater or a materially less apparent market value than they really possess.

(9) "Misstate or conceal material facts from a regulatory body" means an intentional decision not to disclose material facts when all of the following conditions exist:

(A) The decision not to disclose material facts has not been approved by the limited liability company's audit committee.

(B) The decision is intended to give the membership shares in the limited liability company a materially greater or a materially less apparent market value than they really possess.

(10) "Material false statement or omission" means an untrue statement of material fact or an omission to state a material fact necessary in order to make the statements made under the circumstances under which they were made not misleading.

(11) "Officer" means a person appointed pursuant to Section 17703.02, except an officer of a specified subsidiary limited liability company who is not also an officer of the parent limited liability company.

(f) This section only applies to limited liability companies that are issuers, as defined in Section 2 of the federal Sarbanes-Oxley Act of 2002 (15 U.S.C. Sec. 7201 et seq.).

(g) An action to enforce this section may only be brought by the Attorney General or a district attorney or city attorney in the name of the people of the State of California.

SEC. 12. Section 25003 of the Corporations Code is amended to read:

25003. (a) "Agent" means any individual, other than a broker-dealer or a partner of a licensed broker-dealer, who represents a broker-dealer or who for compensation represents an issuer in effecting or attempting to effect purchases or sales of securities in this state.

(b) "Agent" does not include an individual who only represents an issuer in effecting transactions in securities exempted by subdivision (a), (b), (e), (f), (g), (j), (k), or (*l*) of Section 25100 or in effecting transactions exempted by Section 25102, and does not include an individual who has no place of business in this state if he or she effects transactions in this state exclusively with broker-dealers.

(c) "Agent" does not include an associated person of a broker or dealer effecting transactions described in Section 15(i)(4) of the Securities Exchange Act of 1934, subject to the provisions of Section 15(i)(3) of that act.

(d) An officer or director of a broker-dealer or issuer, or an individual occupying a similar status or performing similar functions, is an agent only if he or she otherwise comes within this definition and receives compensation specifically related to purchases or sales of securities.

SEC. 13. Section 25018 of the Corporations Code is amended to read:

25018. "Securities Act of 1933," "Securities Exchange Act of 1934," "Investment Advisers Act of 1940," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after the effective date of this law.

SEC. 14. Section 25100 of the Corporations Code is amended to read:

25100. The following securities are exempted from Sections 25110, 25120, and 25130:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state or any agency or corporate or other instrumentality of any one or more of the foregoing; or any certificate of deposit for any of the foregoing.

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision or municipality of that province, or by any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; or any certificate of deposit for any of the foregoing.

(c) Any security issued or guaranteed by and representing an interest in or a direct obligation of a national bank or a bank or trust company incorporated under the laws of this state, and any security issued by a bank to one or more other banks and representing an interest in an asset of the issuing bank.

(d) Any security issued or guaranteed by a federal savings association or federal savings bank or federal land bank or joint land bank or national farm loan association or by any savings association, as defined in subdivision (a) of Section 5102 of the Financial Code, which is subject to the supervision and regulation of the Commissioner of Business Oversight of this state.

(e) Any security (other than an interest in all or portions of a parcel or parcels of real property which are subdivided land or a subdivision or in a real estate development), the issuance of which is subject to authorization

by the Insurance Commissioner, the Public Utilities Commission, or the Real Estate Commissioner of this state.

(f) Any security consisting of any interest in all or portions of a parcel or parcels of real property that are subdivided lands or a subdivision or in a real estate development; provided that the exemption in this subdivision shall not be applicable to: (1) any investment contract sold or offered for sale with, or as part of, that interest, or (2) any person engaged in the business of selling, distributing, or supplying water for irrigation purposes or domestic use that is not a public utility except that the exemption is applicable to any security of a mutual water company (other than an investment contract as described in paragraph (1)) offered or sold in connection with subdivided lands pursuant to Chapter 2 (commencing with Section 14310) of Part 7 of Division 3 of Title 1.

(g) Any mutual capital certificates or savings accounts, as defined in the Savings Association Law, issued by a savings association, as defined by subdivision (a) of Section 5102 of the Financial Code, and holding a license or certificate of authority then in force from the Commissioner of Business Oversight of this state.

(h) Any security issued or guaranteed by any federal credit union, or by any credit union organized and supervised, or regulated, under the Credit Union Law.

(i) Any security issued or guaranteed by any railroad, other common carrier, public utility, or public utility holding company is (1) subject to jurisdiction of the Federal Energy Regulatory Commission under the Public Utility Holding Company Act of 2005 regulated in respect to its rates and charges by the United States or a state or (2) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, of any state, of Canada or of any Canadian province; and the security is subject to registration with or authorization of issuance by that authority.

(j) Any security (except evidences of indebtedness, whether interest bearing or not) of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual, or (2) organized as a chamber of commerce or trade or professional association. The fact that amounts received from memberships or dues or both will or may be used to construct or otherwise acquire facilities for use by members of the nonprofit organization does not disqualify the organization for this exemption. This exemption does not apply to the securities of any nonprofit organization if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the organization or operation of that nonprofit organization or from remuneration received from that nonprofit organization.

(k) Any agreement, commonly known as a “life income contract,” of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary

profit and (2) which the commissioner designates by rule or order, with a donor in consideration of a donation of property to that issuer and providing for the payment to the donor or persons designated by him or her of income or specified periodic payments from the donated property or other property for the life of the donor or those other persons.

(*l*) Any note, draft, bill of exchange, or banker's acceptance which is freely transferable and of prime quality, arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of that paper which is likewise limited, or any guarantee of that paper or of that renewal, provided that the paper is not offered to the public in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser. In addition, the commissioner may, by rule or order, exempt any issuer of any notes, drafts, bills of exchange, or banker's acceptances from qualification of those securities when the commissioner finds that the qualification is not necessary or appropriate in the public interest or for the protection of investors.

(m) Any security issued by any corporation organized and existing under the provisions of Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code.

(n) Any beneficial interest in an employees' pension, profit-sharing, stock bonus, or similar benefit plan which meets the requirements for qualification under Section 401 of the federal Internal Revenue Code or any statute amendatory thereof or supplementary thereto. A determination letter from the Internal Revenue Service stating that an employees' pension, profit-sharing, stock bonus, or similar benefit plan meets those requirements shall be conclusive evidence that the plan is an employees' pension, profit-sharing, stock bonus, or similar benefit plan within the meaning of the first sentence of this subdivision until the date the determination letter is revoked in writing by the Internal Revenue Service, regardless of whether or not the revocation is retroactive.

(o) Any security listed or approved for listing upon notice of issuance on a national securities exchange, if the exchange has been certified by rule or order of the commissioner and any warrant or right to purchase or subscribe to the security. The exemption afforded by this subdivision does not apply to securities listed or approved for listing upon notice of issuance on a national securities exchange, in a rollup transaction unless the rollup transaction is an eligible rollup transaction as defined in Section 25014.7.

That certification of any exchange shall be made by the commissioner upon the written request of the exchange if the commissioner finds that the exchange, in acting on applications for listing of common stock, substantially applies the minimum standards set forth in either subparagraph (A) or (B) of paragraph (1), and, in considering suspension or removal from listing, substantially applies each of the criteria set forth in paragraph (2).

(1) Listing standards:

(A) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Pretax income of at least seven hundred fifty thousand dollars ($750,000) in the issuer's last fiscal year or in two of its last three fiscal years.

(iii) Minimum public distribution of 500,000 shares (exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings), together with a minimum of 800 public holders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public holders. The exchange may also consider the listing of a company's securities if the company has a minimum of 500,000 shares publicly held, a minimum of 400 shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing under this trading provision, the exchange shall review the nature and frequency of that activity and any other factors as it may determine to be relevant in ascertaining whether the issue is suitable for trading. A security that trades infrequently shall not be considered for listing under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

Companies whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, normally may not be considered eligible for listing unless the public distribution appreciably exceeds 500,000 shares.

(iv) Minimum price of three dollars ($3) per share for a reasonable period of time prior to the filing of a listing application; provided, however, in certain instances an exchange may favorably consider listing an issue selling for less than three dollars ($3) per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above three dollars ($3) per share, the applicant's capitalization, and the number of outstanding and publicly held shares of the issue.

(v) An aggregate market value for publicly held shares of at least three million dollars ($3,000,000).

(B) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Minimum public distribution set forth in clause (iii) of subparagraph (A) of paragraph (1).

(iii) Operating history of at least three years.

(iv) An aggregate market value for publicly held shares of at least fifteen million dollars ($15,000,000).

(2) Criteria for consideration of suspension or removal from listing:

(i) If a company that (A) has shareholders' equity of less than one million dollars ($1,000,000) has sustained net losses in each of its two most recent fiscal years, or (B) has net tangible assets of less than three million dollars ($3,000,000) and has sustained net losses in three of its four most recent fiscal years.

(ii) If the number of shares publicly held (excluding the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings) is less than 150,000.

(iii) If the total number of shareholders is less than 400 or if the number of shareholders of lots of 100 shares or more is less than 300.

(iv) If the aggregate market value of shares publicly held is less than seven hundred fifty thousand dollars ($750,000).

(v) If shares of common stock sell at a price of less than three dollars ($3) per share for a substantial period of time and the issuer shall fail to effectuate a reverse stock split of the shares within a reasonable period of time after being requested by the exchange to take that action.

A national securities exchange, certified by rule or order of the commissioner under this subdivision, shall file annual reports when requested to do so by the commissioner. The annual reports shall contain, by issuer: the variances granted to an exchange's listing standards, including variances from corporate governance and voting rights' standards, for any security of that issuer; the reasons for the variances; a discussion of the review procedure instituted by the exchange to determine the effect of the variances on investors and whether the variances should be continued; and any other information that the commissioner deems relevant. The purpose of these reports is to assist the commissioner in determining whether the quantitative and qualitative requirements of this subdivision are substantially being met by the exchange in general or with regard to any particular security.

The commissioner after appropriate notice and opportunity for hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, may, in his or her discretion, by rule or order, decertify any exchange previously certified that ceases substantially to apply the minimum standards or criteria as set forth in paragraphs (1) and (2).

A rule or order of certification shall conclusively establish that any security listed or approved for listing upon notice of issuance on any exchange named in a rule or order of certification, and any warrant or right to purchase or subscribe to that security, is exempt under this subdivision until the adoption by the commissioner of any rule or order decertifying the exchange.

(p) A promissory note secured by a lien on real property, which is neither one of a series of notes of equal priority secured by interests in the same real property nor a note in which beneficial interests are sold to more than one person or entity.

(q) Any unincorporated interindemnity or reciprocal or interinsurance contract, that qualifies under the provisions of Section 1280.7 of the Insurance Code, between members of a cooperative corporation, organized and operating under Part 2 (commencing with Section 12200) of Division 3 of Title 1, and whose members consist only of physicians and surgeons licensed in California, which contracts indemnify solely in respect to medical malpractice claims against the members, and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration.

(1) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Section 1280.7 of the Insurance Code, the commissioner may,

in the commissioner's discretion, bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with Section 1280.7 of the Insurance Code. Upon a proper showing a permanent or preliminary injunction, a restraining order, or a writ of mandate shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(2) The commissioner may, in the commissioner's discretion, (A) make public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate any provision of Section 1280.7 of the Insurance Code or to aid in the enforcement of Section 1280.7, and (B) publish information concerning the violation of Section 1280.7.

(3) For the purpose of any investigation or proceeding under this section, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to the person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(5) No person is excused from attending or testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise), required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after validly claiming the privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(6) The cost of any review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall be paid to the commissioner by the person subject to the review, examination, audit, or investigation, and the commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. In determining the cost, the commissioner may use the actual amount of the salary or other compensation paid to the persons making the review, examination, audit, or investigation plus the actual amount of expenses including overhead reasonably incurred in the performance of the work.

The recoverable cost of each review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall not exceed twenty-five thousand dollars ($25,000), except that costs exceeding twenty-five thousand dollars ($25,000) shall be recoverable if the costs are necessary to prevent a violation of any provision of Section 1280.7 of the Insurance Code.

(r) Any shares or memberships issued by any corporation organized and existing pursuant to the provisions of Part 2 (commencing with Section 12200) of Division 3 of Title 1, provided the aggregate investment of any shareholder or member in shares or memberships sold pursuant to this subdivision does not exceed three hundred dollars ($300). This exemption does not apply to the shares or memberships of that corporation if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the corporation or the operation of the corporation or from remuneration, other than reasonable salary, received from the corporation. This exemption does not apply to nonvoting shares or memberships of that corporation issued to any person who does not possess, and who will not acquire in connection with the issuance of nonvoting shares or memberships, voting power (Section 12253) in the corporation. This exemption also does not apply to shares or memberships issued by a nonprofit cooperative corporation organized to facilitate the creation of an unincorporated interindemnity arrangement that provides indemnification for medical malpractice to its physician and surgeon members as set forth in subdivision (q).

(s) Any security consisting of or representing an interest in a pool of mortgage loans that meets each of the following requirements:

(1) The pool consists of whole mortgage loans or participation interests in those loans, which loans were originated or acquired in the ordinary course of business by a national bank or federal savings association or federal savings bank having its principal office in this state, by a bank incorporated under the laws of this state or by a savings association as defined in subdivision (a) of Section 5102 of the Financial Code and which is subject to the supervision and regulation of the Commissioner of Financial Institutions, and each of which at the time of transfer to the pool is an authorized investment for the originating or acquiring institution.

(2) The pool of mortgage loans is held in trust by a trustee which is a financial institution specified in paragraph (1) as trustee or otherwise.

(3) The loans are serviced by a financial institution specified in paragraph (1).

(4) The security is not offered in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser.

(5) The security is offered pursuant to a registration under the Securities Act of 1933, or pursuant to an exemption under Regulation A under that act, or in the opinion of counsel for the issuer, is offered pursuant to an exemption under Section 4(2) of that act.

(t) (1) Any security issued or guaranteed by and representing an interest in or a direct obligation of an industrial loan company incorporated under

the laws of the state and authorized by the Commissioner of Financial Institutions to engage in industrial loan business.

(2) Any investment certificate in or issued by any industrial loan company that is organized under the laws of a state of the United States other than this state, that is insured by the Federal Deposit Insurance Corporation, and that maintains a branch office in this state.

SEC. 15. Section 25207 of the Corporations Code is amended to read:

25207. A financial institution that undertakes activities with respect to an investment company pursuant to the provisions of Section 1514, 6524, 14652.5, or 18022.5 of the Financial Code shall not be subject to Section 25210 or 25230 in connection with such activities but shall be subject to Sections 25218, 25234, 25235, and 25237 and to subdivisions (a), (b), and (d) of Section 25216, and such rules thereunder as the commissioner may specify by rule. Nothing in this section shall affect the status of such a financial institution as a broker-dealer or investment adviser, or the employees of such persons, when engaged in the activities authorized by the provisions of the Financial Code specified above.

SEC. 16. Section 25243.5 of the Corporations Code is amended to read:

25243.5. (a) A broker-dealer or investment adviser, or an agent or representative thereof, shall not use a senior-specific certification, credential, or professional designation in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the broker-dealer, investment adviser, or an agent or representative thereof, has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person.

(b) The prohibited use of these certifications, credentials, or professional designations includes, but is not limited to, the following:

(1) The use of a certification, credential, or professional designation by a person who has not actually earned or is otherwise ineligible to use the certification, credential, or designation.

(2) The use of a nonexistent or self-conferred certification, credential, or professional designation.

(3) The use of a certification, credential, or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification, credential, or professional designation does not have.

(4) The use of a certification, credential, or professional designation that was obtained from a designating, credentialing, or certifying organization where any of the following apply:

(A) The organization is primarily engaged in the business of instruction in sales marketing.

(B) The organization does not have reasonable standards or procedures for assuring the competency of individuals to whom it grants a certification, credential, or professional designation.

(C) The organization does not have reasonable standards or procedures for monitoring and disciplining individuals with a certification, credential, or professional designation for improper or unethical conduct.

(D) The organization does not have reasonable continuing education requirements for individuals with a certification, credential, or professional designation in order to maintain the certificate, credential, or professional designation.

(c) There is a rebuttable presumption that a designating, credentialing, or certifying organization is not disqualified solely for the purposes of paragraph (4) of subdivision (b) when the organization has been accredited by the American National Standards Institute, the National Commission for Certifying Agencies, or an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the certification, credential, or professional designation issued therefrom does not primarily apply to sales and/or marketing.

(d) In determining whether a combination of words, or an acronym standing for a combination of words, constitutes a certification, credential, or professional designation indicating or implying that a person has special certification or training in advising or serving senior citizens or retirees, factors to be considered shall include both of the following:

(1) Use of one or more word such as "senior," "retirement," "elder," or like words combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification, credential, or professional designation or credential.

(2) The manner in which those words are combined.

(e) This section shall not apply to the use of a job title by a person within an organization that is licensed or registered by the Department of Business Oversight or a federal financial services regulatory agency, when that job title indicates seniority or standing within the organization, or specifies a person's area of specialization within the organization. For the purposes of this subdivision, federal financial services regulatory agency includes, but is not limited to, an agency that regulates brokers or dealers, investment advisers, or investment companies as described under the Investment Company Act of 1940 (15 U.S.C. Sec. 809-1 et seq.).

(f) (1) This section shall not apply to a broker or agent who is licensed by the Department of Insurance and is in compliance with the requirements of Section 787.1 of the Insurance Code.

(2) This subdivision shall be operative only if Assembly Bill 2150 of the 2007–08 Regular Session is chaptered and becomes effective and that bill adds Section 787.1 to the Insurance Code.

(g) This section shall become operative on July 1, 2009.

SEC. 17. Section 25247 of the Corporations Code is amended to read:

25247. (a) Upon written or oral request, the commissioner shall make available to any person the information specified in Section 6254.12 of the Government Code and made available through the Public Disclosure Program

of the Financial Industry Regulatory Authority with respect to any broker-dealer or agent licensed or regulated under this part. The commissioner shall also make available the current license status and the year of issuance of the license of a broker-dealer. Any information disclosed pursuant to this subdivision shall constitute a public record. Notwithstanding any other provisions of law, the commissioner may disclose either orally or in writing that information pursuant to this subdivision. There shall be no liability on the part of and no cause of action of any nature shall arise against the State of California, the Department of Business Oversight, the Commissioner of Business Oversight, or any officer, agent, or employee of the state or of the Department of Business Oversight for the release of any false or unauthorized information, unless the release of that information was done with knowledge and malice.

(b) Any broker-dealer or agent licensed or regulated under this part shall upon request deliver a written notice to any client when a new account is opened stating that information about the license status or disciplinary record of a broker-dealer or an agent may be obtained from the Department of Corporations, or from any other source that provides substantially similar information.

(c) The notice provided under subdivision (b) shall contain the office location or telephone number where the information may be obtained.

(d) A broker-dealer or agent shall be exempt from providing the notice required under subdivision (b) if a person who does not have a financial relationship with the broker-dealer or agent, requests only general operational information such as the nature of the broker-dealer's or agent's business, office location, hours of operation, basic services, and fees, but does not solicit advice regarding investments or other services offered.

(e) Upon written or oral request, the commissioner shall make available to any person the disciplinary records maintained on the Investment Adviser Registration Depository and made available through the Investment Advisor Public Disclosure Web site with respect to any investment adviser, investment adviser representative, or associated person of an investment adviser licensed or regulated under this part. The commissioner shall also make available the current license status and the year of issuance of the license of an investment adviser. Any information disclosed pursuant to this subdivision shall constitute a public record. Notwithstanding any other provision of law, the commissioner may disclose that information either orally or in writing pursuant to this subdivision. There shall be no liability on the part of and no cause of action of any nature shall arise against the State of California, the Department of Business Oversight, the Commissioner of Business Oversight, or any officer, agent, or employee of the state or of the Department of Business Oversight for the release of any false or unauthorized information, unless the release of that information was done with knowledge and malice.

(f) Section 461 of the Business and Professions Code shall not be applicable to the Department of Corporations when using a national, uniform application adopted or approved for use by the Securities and Exchange

Commission, the North American Securities Administrators Association, or the Financial Industry Regulatory Authority that is required for participation in the Central Registration Depository or the Investment Adviser Registration Depository.

(g) This section shall not require the disclosure of criminal history record information maintained by the Federal Bureau of Investigation pursuant to Section 534 of Title 28 of the United States Code, and the rules thereunder, or information not otherwise subject to disclosure under the Information Practices Act of 1977.

SEC. 18. Section 25254 of the Corporations Code is amended to read:

25254. (a) If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this part a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief.

(b) In an administrative action brought under this part, the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include an amount representing reasonable attorney's fees and investigative expenses for the services rendered, for deposit into the State Corporations Fund for the use of the Department of Business Oversight.

(c) After the exhaustion of the review procedures provided in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and costs awarded in a final decision and order compelling the respondent, or the named or cited person, to comply with the final decision of the commissioner brought under this division. The application shall include a certified copy of the final decision of the commission and shall constitute a sufficient showing to warrant the issuance of the judgment and order from superior court.

SEC. 19. Section 25401 of the Corporations Code is amended to read:

25401. It is unlawful for any person to offer or sell a security in this state, or to buy or offer to buy a security in this state, by means of any written or oral communication that includes an untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading.

SEC. 20. Section 25604 of the Corporations Code is amended to read:

25604. The administration and enforcement of, and the education of the public relative to, the laws and programs of the Department of Business Oversight shall be supported from the State Corporations Fund. Funds appropriated from the State Corporations Fund and made available for expenditure for any law or program of the department may come from fees collected from the following:

(a) Section 25608, except for fees collected pursuant to subdivisions (o) to (r), inclusive, of Section 25608.

(b) Section 25608.1.

SEC. 21. Section 25607 of the Corporations Code is amended to read:

25607. (a) Neither the commissioner nor any of the commissioner's assistants, clerks, or deputies shall be interested as a director, officer, shareholder, member (other than a member of an organization formed for religious purposes), partner, agent, or employee of any person who, during the period of the official's or employee's association with the Department of Business Oversight, (1) was licensed or applied for license as a broker-dealer or investment adviser under this division, or (2) applied for or secured the qualification of the sale of securities under this division.

(b) Nothing contained in subdivision (a) shall prohibit the holding or purchasing of any securities by any assistant, clerk, or deputy in accordance with rules as the commissioner shall adopt for the purpose of protecting the public interest and avoiding conflicts of interest.

(c) Nothing contained in subdivision (a) shall prohibit the holding or purchasing of any securities by the commissioner if any of the following criteria is met:

(1) The securities held or purchased by the commissioner are exempt from the qualification requirements of Sections 25110, 25120, and 25130 by virtue of Section 25100, provided that the holding or purchasing of those securities is in accordance with rules adopted for the purpose of protecting the public interest and avoiding conflicts of interest.

(2) The securities held or purchased by the commissioner are not subject to Sections 25110, 25120, and 25130 by virtue of Section 25100.1, provided that the holding or purchasing of those securities is in accordance with rules adopted for the purpose of protecting the public interest and avoiding conflicts of interest.

(3) The holding or purchasing of any securities by the commissioner meets each of the following requirements:

(A) The securities are held or purchased through a management account or trust administered by a bank or trust company authorized to do business in this state, and the bank or trust company has sole investment discretion regarding the holding, purchase, and sale of securities.

(B) The commissioner did not, directly or indirectly, advise, counsel, command, or suggest the holding, purchase, or sale of any security or furnish any information relating to the security to the bank or trust company.

(C) The account or trust does not at any time have more than 10 percent of its total assets invested in the securities of any one issuer or hold more than 5 percent of the outstanding shares or units of any class of securities of any one issuer.

(D) The commissioner shall report to the Attorney General not less often than quarterly all holdings, purchases, and sales of securities by him or her as authorized in paragraph (3), which reports shall be retained by the Attorney General as public documents.

SEC. 22. Section 25612.5 of the Corporations Code is amended to read:

25612.5. (a) To encourage uniform interpretation and administration of this law and the Franchise Investment Law (Division 5 (commencing with Section 31000)) and effective securities and franchise regulation and enforcement, the commissioner may cooperate with the securities agencies or administrators of one or more states, Canadian provinces or territories, or other countries, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Securities Investor Protection Corporation, any self-regulatory organization, any national or international organization or securities officials or agencies, and any governmental law enforcement or regulatory agency.

(b) The cooperation authorized by subdivision (a) includes, but is not limited to, the following actions:

(1) Prescribing rules and forms with a view to achieving maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(2) Participating in a nationwide central depository for qualification or registration of securities under this law and for documents or records required or allowed to be maintained under this law.

(3) Participating in the Central Registration Depository, or any successor or alternative nationwide or regional depository, for the registering, certifying, or licensing of broker-dealers or agents, or both.

(4) Participating in the Investment Adviser Registration Depository, or any successor or alternative nationwide or regional depository, for the registering, certifying, or licensing of investment advisers or investment adviser representatives, or both.

(5) Cooperating in any regulatory activity necessary in the administration of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56; USA Patriot Act), consistent with state law.

(c) Notwithstanding any other provision of law, any application for qualification, amendment to the application or related securities qualification or registration document or notice under Sections 25100.1, 25101.1, 25102, 25102.1, 25110, 25120, 25130, and 25230.1 or record otherwise required to be signed that is filed in this state as an electronic record pursuant to a nationwide central depository for qualification or registration of securities, or any electronic record filed through the Central Registration Depository or the Investment Adviser Registration Depository, shall be deemed to be a valid original document upon reproduction to paper form by the Department of Business Oversight.

(d) For purposes of this section, “electronic record” has the same meaning as in subdivision (g) of Section 1633.2 of the Civil Code.

SEC. 23. Section 25614 of the Corporations Code is amended to read:

25614. All rules of the commissioner (other than those relating solely to the internal administration of the Department of Business Oversight) shall be made, amended, or rescinded in accordance with the provisions of the Administrative Procedure Act, Chapter 4 (commencing with Section 11370) of Part 1 of Division 3 of Title 2 of the Government Code. Rules

may be adopted prior to the effective date of this law to become effective upon its effective date.

SEC. 24. Section 25702 of the Corporations Code is amended to read:

25702. Whenever a person is entitled under this law to a hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, a formal hearing before the Department of Business Oversight may be substituted with the consent of such person and of the commissioner for such hearing before an independent hearing officer; and in that case after such hearing before the Department of Business Oversight such person shall not be entitled to any further administrative remedy.

SEC. 25. Section 29542 of the Corporations Code is amended to read:

29542. (a) If, in the opinion of the commissioner, any person is engaging in any activity in violation of any provision of this law, or rule or order under this law, the commissioner may order the person to desist and refrain from the activity unless and until the activity will not be in violation of any provision of this law or any rule or order under this law.

(b) If after an order has been made under subdivision (a), a request for hearing is filed in writing within 30 days of the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all of the powers granted under the Administrative Procedure Act. Unless the hearing is commenced within 15 business days after the request is filed (or the person affected consents to a later date), the order is rescinded.

If that person fails to file a written request for a hearing within 30 days from the date of service of the order, the order shall be deemed a final order of the commissioner and shall not be subject to review by any court or agency, notwithstanding Section 29563.

SEC. 26. Section 31408 of the Corporations Code is amended to read:

31408. (a) If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this division, including a stop order, a claim for ancillary relief, including, but not limited to, a claim for rescission, restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief. The person affected may be required to attend remedial education, as directed by the commissioner.

(b) In an administrative action brought under this part the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include any amount representing reasonable attorney's fees and investigative expenses for the services rendered, for deposit into the State Corporations Fund for the use of the Department of Business Oversight.

SEC. 27. Section 31503 of the Corporations Code is amended to read:

31503. All rules of the commissioner, other than those relating solely to the internal administration of the Department of Business Oversight, shall

be made, amended, or rescinded in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 28. Section 31513 of the Corporations Code is amended to read:

31513. Whenever a person is entitled under this law to a hearing in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, a formal hearing before the Department of Business Oversight may be substituted with the consent of such person and of the commissioner for such hearing before an independent hearing officer; and in that case after such hearing before the Department of Business Oversight such person shall not be entitled to any further administrative remedy.

SEC. 29. Section 620 of the Financial Code is amended to read:

620. If the licensee whose property and business has been taken pursuant to Section 592 is insured by a Federal Insurance Agency, the commissioner may tender to the appropriate Federal Insurance Agency an appointment as conservator, liquidator, or receiver of the licensee. The commissioner shall determine whether the licensee whose property and business has been taken shall be liquidated or conserved. If the Federal Insurance Agency accepts the appointment, the Federal Insurance Agency shall have, in addition to any powers conferred by applicable federal law, the powers conferred on the commissioner pursuant to this chapter.

SEC. 30. Section 622 of the Financial Code is amended to read:

622. If the Federal Insurance Agency accepts the appointment in accordance with Section 620, the rights of customers and other creditors of the insured licensee shall be determined in accordance with the applicable provisions of the laws of this state.

SEC. 31. The heading of Article 4 (commencing with Section 670) of Chapter 7 of Division 1 of the Financial Code is amended to read:

Article 4. Liquidation of an Uninsured Licensee

SEC. 32. Section 1008 of the Financial Code is repealed.

SEC. 33. Section 1070 of the Financial Code is amended to read:

1070. For purposes of this chapter, the following definitions apply:

(a) "Automated teller machine" means any electronic information processing device used by a financial institution and its customers for the primary purpose of executing transactions solely between the financial institution and its customers, if the transactions are not incidental to sales between the customer and a business entity other than a financial institution.

(b) "Branch office" means any office at which core banking business is conducted other than an automated teller machine, a device used to facilitate check guarantee or check authorization, or a remote service facility as defined in subsection (d) of Section 345.12 of Title 12 of the Code of Federal Regulations.

(c) "Core banking business" means the business of receiving deposits, paying checks, making loans, and other activities that the commissioner may specify by order or regulation. "Core banking business," when used to describe the trust business, includes receiving fiduciary assets and administering fiduciary accounts.

(d) "Facility," means an office at which a bank engages in noncore banking business but at which it does not engage in core banking business.

(e) "Head office" means the office designated by the bank as its headquarters.

(f) "Noncore banking business" means all activities permissible for banks, except core banking business, and except those activities prohibited by law or determined by the commissioner by regulation or order not to be noncore banking business.

(g) "Office" means the head office, any branch office, and any facility office of a bank.

(h) "Redesignate offices" means (1) the relocation by a bank of its head office to the site of a branch or facility office in this state and the concurrent establishment by the bank of an office at the former site of the head office, or (2) the relocation by a bank of a branch office to the site of a facility office and the concurrent establishment by the bank of a branch or facility office at the former site of the branch office.

SEC. 34. Section 2105 of the Financial Code is amended to read:

2105. (a) Each licensee or agent shall prominently post on the premises of each branch office that conducts money transmission a notice stating that:

> "If you have complaints with respect to any aspect of the money transmission activities conducted at this location, you may contact the California Department of Business Oversight at its toll-free telephone number, 1-866-275-2677, by email at consumer.services@dbo.ca.gov, or by mail at the Department of Business Oversight, Consumer Services, 1515 K Street, Suite 200, Sacramento, CA 95814."

(b) The commissioner may by order or regulation modify the content of the notice required by this section. This notice shall be printed in English and in the same language principally used by the licensee or any agent of the licensee to advertise, solicit, or negotiate either orally or in writing, with respect to money transmission at that branch office. The information required in this notice shall be clear, legible, and in letters not less than one-half inch in height. The notice shall be posted in a conspicuous location in the unobstructed view of the public within the premises. The licensee shall provide to each of its agents the notice required by this section. In those locations operated by an agent, the agent, and not the licensee, shall be responsible for the failure to properly post the required notice.

(c) In the event that a licensee or agent conducts money transmission activity via an Internet Web site or a mobile application that is not in a

branch office, the commissioner may authorize an alternative form of the notice required in subdivision (a).

SEC. 35. Section 4057 of the Financial Code is amended to read:

4057. (a) An entity that negligently discloses or shares nonpublic personal information in violation of this division shall be liable, irrespective of the amount of damages suffered by the consumer as a result of that violation, for a civil penalty not to exceed two thousand five hundred dollars ($2,500) per violation. However, if the disclosure or sharing results in the release of nonpublic personal information of more than one individual, the total civil penalty awarded pursuant to this subdivision shall not exceed five hundred thousand dollars ($500,000).

(b) An entity that knowingly and willfully obtains, discloses, shares, or uses nonpublic personal information in violation of this division shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) per individual violation, irrespective of the amount of damages suffered by the consumer as a result of that violation.

(c) In determining the penalty to be assessed pursuant to a violation of this division, the court shall take into account the following factors:

(1) The total assets and net worth of the violating entity.

(2) The nature and seriousness of the violation.

(3) The persistence of the violation, including any attempts to correct the situation leading to the violation.

(4) The length of time over which the violation occurred.

(5) The number of times the entity has violated this division.

(6) The harm caused to consumers by the violation.

(7) The level of proceeds derived from the violation.

(8) The impact of possible penalties on the overall fiscal solvency of the violating entity.

(d) In the event a violation of this division results in the identity theft of a consumer, as defined by Section 530.5 of the Penal Code, the civil penalties set forth in this section shall be doubled.

(e) The civil penalties provided for in this section shall be exclusively assessed and recovered in a civil action brought in the name of the people of the State of California in any court of competent jurisdiction by any of the following:

(1) The Attorney General.

(2) The functional regulator with jurisdiction over regulation of the financial institution as follows:

(A) In the case of banks, savings associations, credit unions, commercial lending companies, and bank holding companies, by the Department of Business Oversight, Division of Financial Institutions or the appropriate federal authority; (B) in the case of any person engaged in the business of insurance, by the Department of Insurance; (C) in the case of any investment broker or dealer, investment company, investment adviser, residential mortgage lender or finance lender, by the Department of Business Oversight, Division of Corporations; and (D) in the case of a financial institution not

subject to the jurisdiction of any functional regulator listed under subparagraphs (A) to (C), inclusive, above, by the Attorney General.

SEC. 36. Section 12104 of the Financial Code is amended to read:

12104. A nonprofit community service organization that meets all of the following criteria shall be exempt from any requirements imposed on proraters pursuant to this division:

(a) The nonprofit community service organization incorporates in this state or any other state as a nonprofit corporation and operates pursuant to either the Nonprofit Public Benefit Corporation Law, Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code or the Nonprofit Mutual Benefit Corporation Law, Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code.

(b) The nonprofit community service organization limits its membership to retailers, lenders in the consumer credit field, educators, attorneys, social service organizations, employer and employee organizations, and related groups that serve educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes.

(c) The nonprofit community service organization has as its principal functions the following:

(1) Consumer credit education.

(2) Counseling on consumer credit problems and family budgets.

(3) Arranging or administering debt management plans. “Debt management plan” means a method of paying debtor’s obligations in installments on a monthly basis.

(4) Arranging or administering debt settlement plans. “Debt settlement plans” means a method of paying debtor’s obligations in a negotiated amount to each creditor on a one-time basis.

(d) The nonprofit community service organization receives from a debtor no more than the following maximum amounts to offset the organization’s actual and necessary expenses for the services described in subdivision (c): a one-time sum not to exceed fifty dollars ($50) for education and counseling combined in connection with debt management or debt settlement services; and for debt management plans, a sum not to exceed 8 percent of the money disbursed monthly, or thirty-five dollars ($35) per month, whichever is less, and for debt settlement plans a sum not to exceed 15 percent of the amount of the debt forgiven for negotiated debt settlement plans. Nonprofit community service organizations shall not require any upfront payments or deposits on debt settlement plans and may only require payment of fees once the debt has been successfully settled. For purposes of this subdivision, a household shall be considered one debtor. The fees allowed pursuant to this subdivision shall be the only fees that may be charged by a nonprofit community service organization for any services related to a debt management plan or a debt settlement plan.

(e) The nonprofit community service organization maintains and keeps current and accurate books, records, and accounts relating to its business in accordance with generally accepted accounting principles, and stores them

in a readily accessible place for a period of no less than five years from the end of the fiscal year in which any transactions occurred.

(f) The nonprofit community service organization deposits any money received from a debtor for the services described in subdivision (c) in a noninterest-bearing trust account in a federally insured state or federal bank, savings bank, savings and loan association, or credit union, which account is maintained specifically for purposes of administering a debt management plan or debt settlement plan. The nonprofit community service organization shall provide the commissioner the following prior to engaging in business in this state and claiming this exemption:

(1) A written notice with the name, address, and telephone number of the bank, savings bank, savings and loan association, or credit union where the trust account is maintained, and the name of the account and the account number. The account information required in this paragraph shall be kept confidential pursuant to the laws governing disclosure of public records, including the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, and the rules adopted thereunder.

(2) An irrevocable written consent providing that upon the commissioner taking possession of the property and business of the nonprofit community service organization, all books, records, property, and business, including trust accounts and any other accounts holding debtors' funds, shall be immediately turned over to the commissioner or receiver appointed pursuant to this division. The consent shall be signed by the nonprofit community service organization and the bank, savings bank, savings and loan association, or credit union where the trust account is maintained. The consent shall be binding upon the nonprofit community service organization and the bank, savings bank, savings and loan association, or credit union, and any objection to it must be raised pursuant to the laws of the State of California and only in the forum in which the proceeding to take possession or appointment of the receiver has been filed. The nonprofit community service organization and the bank, savings bank, savings and loan association, or credit union shall further consent to the jurisdiction of the commissioner for the purpose of any investigation or proceeding under Sections 12105 and 12106 or any other provision of this division. The consent required by this paragraph shall include the name, title, and signature of an official of the bank, savings bank, savings and loan association, or credit union holding the authority to consent on behalf of that institution, and the name, title, and signature of the chief executive officer or president of the nonprofit community service organization.

(g) The nonprofit community service organization maintains at all times a surety bond in the amount of twenty-five thousand dollars ($25,000), issued by an insurer licensed in this state. The bond shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of Section 12104 of the Financial Code, honestly and faithfully applying all funds received, honestly and faithfully performing all obligations and undertakings required under this section, and paying to the state and to any

person all money that becomes due and owing to the state or to any person owed by the obligor of the bond.

(h) The nonprofit community service organization reports all of the following to the debtor at least once every three months, or upon the debtor's request, for any debt management plan or debt settlement plan:

(1) Total amount received from the debtor.

(2) Total amount paid to each creditor.

(3) Total amount any creditor has agreed to accept as payment in full on any debt owed by the debtor.

(4) Any amount paid to the organization by the debtor.

(5) Any amount held in reserve.

(i) The nonprofit community service organization submits to the commissioner, at the organization's expense, an audit report containing audited financial statements covering the calendar year or, if the organization has an established fiscal year, then for that fiscal year, within 120 days after the close of the calendar or fiscal year.

(j) The nonprofit community service organization submits with the annual financial statements required under subdivision (i) a declaration that conforms to Section 2015.5 of the Code of Civil Procedure, is executed by an official authorized by the board of the organization, and that states that the organization complies with this section. The annual financial statements shall also include a separate written statement that identifies the name, address, contact person, and telephone number of the organization.

(k) The nonprofit community service organization maintains accreditation by an independent accrediting organization, including either the Council on Accreditation or the International Standards Organization, with sector certification.

(*l*) The nonprofit community service organization does not engage in any act or practice in violation of Section 17200 or 17500 of the Business and Professions Code.

(m) The nonprofit community service organization inserts the following statement, in not less than 10-point type, in its debt management plan and debt settlement plan agreements: "Complaints related to this agreement may be directed to the California Department of Business Oversight. This nonprofit community service organization has adopted best practices for debt management plans and debt settlement plans, and a copy will be provided upon request."

(n) The nonprofit community service organization adopts and implements on a continuous basis policies or procedures of best practices that are designed to prevent improper debt management or debt settlement practices and prevent theft and misappropriation of funds. Failure to do the following shall constitute improper debt management or debt settlement practices, as applicable:

(1) Obtain counselor certification conducted by a nationally recognized third-party certification program that certifies that all of the agency's counselors receive proper training and are qualified to provide financial assistance prior to performing counseling services in this state.

(2) Disburse funds no later than 15 days after receipt of valid funds, or by a scheduled disbursement date, whichever is the greater amount of time.

(3) Transmit funds utilizing electronic payment processing when available.

(4) Implement an inception date policy, which shall include an agreement that a consumer's first disbursement pursuant to a debt management plan shall be received within 90 days of agreeing to the debt management plan service. The debt management plan shall include all items described in subdivision (h) and shall be provided to the consumer at the inception date of the plan. A description of best practices of the agency and of the consumer complaint resources shall be issued no later than the first payment date.

(5) Respond to and research any complaint initiated by a consumer within five business days of receipt of the complaint.

(6) Prohibit a policy requiring debt management plan consumers from being required to utilize additional ancillary services.

(7) Provide consumer access to debt management plan services regardless of the consumer's ability to pay fees related to the debt management plan, lack of creditor participation, or the amount of the consumer's outstanding debt.

(8) Implement policies that specifically prohibit credit counselors from receiving financial incentives or additional compensation based on the outcome of the counseling process.

(9) Prohibit the practice of paying referral fees to consumers or other third parties who refer new clients to the agency.

(10) Disclose in all written contracts with consumers the portion of funding for the agency that is provided by creditors.

(11) Disclose in all written contracts for debt management plans or debt settlement plans that these plans are not suitable for all consumers and that consumers may request information on other options, including, but not limited to, bankruptcy.

(12) Fully disclose all services to be provided by the agency and any initial and ongoing fees to be charged by the agency for services, including, but not limited to, contributions to the agency.

(13) Prohibit the agency or any affiliate of the agency from purchasing debt from a consumer.

(14) Prohibit the agency from offering loans to consumers involving the charging of interest.

(15) Prominently disclose in written contracts with consumers of any financial arrangement between the agency and any lender or any provider of financial services if the agency receives any form of compensation for referring consumers to that lender or provider of financial services.

(16) Provide professional liability insurance coverage.

(17) Provide the debtor a written individualized evaluation of his or her financial status and an initial debt management plan for the debtor's debts with specific recommendations regarding actions the debtor should take.

(18) Provide the debtor enrolling in a debt management plan a written reliable estimate of the length of time it will take to complete the plan and

identifies the total debt owed to each creditor included in the plan, the proposed payment to each creditor, and any fees that would be charged for administering the plan. The estimate shall be provided prior to receipt of the debtor's first deposit.

(o) The nonprofit community service organization provides a copy of the best practices described in subdivision (n) to its debtor, upon request.

(p) The nonprofit community service organization resolves in a prompt and reasonable manner complaints from debtors relating to the organization's debt management plans or debt settlement plans.

(q) The nonprofit community service organization provides written notice to the commissioner within 30 days of dissolution or termination of engaging in the activities of a prorater, as defined in Section 12002.1.

(r) This section shall become inoperative upon the enactment of a statute requiring the licensure and regulation of nonprofit community service organizations providing consumer credit counseling.

SEC. 37. Section 17210.2 of the Financial Code is amended to read:

17210.2. (a) No escrow agent shall disseminate, or cause or permit to be disseminated, in any manner whatsoever, any statement or representation which is false, misleading, or deceptive, or which omits to state material information, or which refers to the supervision of that agent by the State of California or any department or official thereof.

(b) A licensed escrow agent, in referring to the corporation's licensure under this law in any written or printed communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communications media, shall include the following statement: "This escrow company holds California Department of Business Oversight Escrow License No. ____."

(c) The commissioner may order any person to desist from any conduct which the commissioner finds to be a violation of this section.

SEC. 38. Section 17214 of the Financial Code is amended to read:

17214. (a) There is established in the Department of Business Oversight an Escrow Law Advisory Committee consisting of 11 members. The members shall consist of the commissioner or his or her designee; the chairman of the board and the immediate past chairman of the board for the Escrow Agents' Fidelity Corporation; the current chairman of the board and the immediate past chairman of the board for the Escrow Institute of California; a person selected by the commissioner to represent a different type of business ownership under this division; a person selected by the commissioner to represent a different type of business specialization; a person selected by the commissioner to represent small businesses operating pursuant to this division; a person selected by the commissioner to represent medium-sized businesses operating pursuant to this division; an attorney at law experienced in escrow matters selected by the commissioner; and a certified public accountant experienced in the escrow business selected by the commissioner.

Except for the members from the Escrow Agents' Fidelity Corporation and the Escrow Institute of California, members appointed by the commissioner shall serve for a term of two years.

The committee shall meet at least quarterly. The commissioner or his or her designee shall chair the committee. All members shall serve without compensation or reimbursement for expenses.

Where the chairman of the board or the immediate past chairman of the board of the Escrow Agents' Fidelity Corporation is the same person, or is unable to serve on the advisory committee, then the commissioner, after consultation with the board of directors of the Escrow Agents' Fidelity Corporation, shall choose a member of the board of directors to serve on the committee. Where the president or past president of the Escrow Institute of California is the same person, or is unable to serve on the advisory committee, then the commissioner, after consultation with the board of directors of the Escrow Institute of California, shall choose a member of the board of directors to serve on the committee.

(b) The purpose of the committee is to assist the commissioner in the implementation of the commissioner's duties under this chapter.

SEC. 39. Section 17311 of the Financial Code is amended to read:

17311. (a) Persons licensed pursuant to this division shall maintain a corporation under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) operating under the name Escrow Agents' Fidelity Corporation.

(b) The State of California, the Department of Business Oversight, or any officer, agent, or employee of either shall not be liable in any way for the conduct of Fidelity Corporation, its directors, officers, agents, employees, or members.

SEC. 40. Section 17320 of the Financial Code is amended to read:

17320. Fidelity Corporation shall establish and maintain the following funds for payment of claims and for payment of costs of administration: the membership fund, the operations fund, and the fidelity fund.

(a) An applicant or a licensee shall, at the time an application is filed for a license, pay to Fidelity Corporation a membership fee of three thousand dollars ($3,000) for each location for which a license is applied. If the application is denied, withdrawn, or abandoned, Fidelity Corporation may retain two hundred dollars ($200) from the membership fee to cover costs of administration.

(1) The membership fund shall be reserved for payment of claims which exceed the fidelity fund balance and for payment of extraordinary operational costs.

(2) Any member who, on the effective date of this section, has an account balance which exceeds the three thousand dollars ($3,000) membership fee times the number of its licensed locations shall be credited in a special reserve account for the excess amount. This balance shall be credited against future assessments made pursuant to subdivision (b) of Section 17321 in an amount not exceeding four hundred dollars ($400) per licensed location per year. Any member whose account balance is less than three thousand

dollars ($3,000) times the number of its licensed locations shall, on or before December 1, 1988, pay to Fidelity Corporation an amount sufficient to allow the member's account to be maintained at three thousand dollars ($3,000) times the number of licensed locations. Fidelity Corporation shall provide each member with an accounting of the amounts being reserved for the members' membership account and amounts being held as a special reserve.

(3) The membership fee, less any unpaid assessments and related costs, shall be refunded to the member in accordance with Fidelity Corporation's bylaws not less than 30 months and no more than 36 months after the effective date of surrender of a license.

(4) Any member who does not engage in any escrow transactions pursuant to subdivision (c) of Section 17312 may terminate its membership in Fidelity Corporation by written notice to Fidelity Corporation and the Department of Business Oversight, as provided in the Fidelity Corporation's bylaws and rules and regulations. The membership fee, less any unpaid assessments and related costs, shall be refunded to the member in accordance with Fidelity Corporation's bylaws not less than 30 months and no more than 36 months after the effective date of the member's written request to terminate its membership in Fidelity Corporation. Before a licensee resumes those escrow transactions, it shall first be required to become a member of Fidelity Corporation, as provided in this subdivision.

(b) Fidelity Corporation shall prepare, prior to its fiscal year end, an estimated annual operational budget projecting the costs of operations and administration for the succeeding fiscal year, excluding the amount paid for claims and premiums paid for excess coverage bonding. The amount of the assessment shall be 150 percent of the budgetary projection. In succeeding years, the assessment shall be adjusted by adding the prior year's deficit or deducting unused surplus from the prior year.

(c) Fidelity Corporation shall establish a fidelity fund for the payment of claims and for the payment of the premium for the fidelity bond or insurance policy, if any. All claims shall be paid from the fidelity fund, provided that, to the extent that the fidelity fund balance is not sufficient to pay claims, the claim shall be paid from the membership fund by charging each member's membership account a pro rata share of the excess.

(d) All interest earned on the membership fund and the operations fund shall be credited to the fidelity fund.

SEC. 41. Section 17331 of the Financial Code is amended to read:

17331. (a) An applicant applying for licensure as an escrow agent under this division is required to apply for a Fidelity Corporation Certificate, prepared and issued by Fidelity Corporation, for each proposed shareholder, officer, director, trustee, manager, or employee who is to be directly or indirectly compensated by the escrow agent, prior to licensure of the escrow agent by the commissioner.

(b) A shareholder, officer, director, trustee, manager, or employee of an escrow agent, directly or indirectly compensated by an escrow agent within this state, is required to complete and execute a Fidelity Corporation Certificate application, prepared and issued by Fidelity Corporation, as a

condition of his or her employment or entitlement to compensation, before the person may continue the regular discharge of his or her duties, or have access to moneys or negotiable securities belonging to or in the possession of the escrow agent, or draw checks upon the escrow agent or the trust funds of the escrow agent.

(c) Fidelity Corporation Certificates may also be known as Escrow Agent's Fidelity Corporation Certificates or EAFC Certificates. The certificate at all times remains the property of Fidelity Corporation, and is not transferable by either a member or employee. The certificate is not a warranty or guarantee by Fidelity Corporation of the integrity, veracity, or competence of the person.

(d) An application for a Fidelity Corporation Certificate shall be in writing and in the form prescribed by Fidelity Corporation. The application may include (1) a fee not to exceed fifty dollars ($50), (2) two passport-size photographs, and (3) a set of fingerprint images and related information using the process established by the Department of Justice for requesting state summary criminal history information, plus the fee charged by the Department of Justice for processing noncriminal applicant fingerprint images and related information, in a manner established by the Department of Justice pursuant to subdivision (*l*). The Department of Justice shall honor the Fidelity Corporation report request form and issue a report to Fidelity Corporation, notwithstanding any other provision of law or regulation to the contrary. Fidelity Corporation is also entitled to submit a set of fingerprint images and related information in the Department of Justice specified noncriminal applicant fingerprint format for the purpose of requesting and obtaining a report from the Department of Justice, for the officers and employees of Fidelity Corporation. A member shall cause the filing of applications for all existing employees as required by this section within 30 days of written notice by Fidelity Corporation to the member.

(e) The application form shall include a provision for binding arbitration to allow for arbitration of any appeal or dispute as to a decision by Fidelity Corporation concerning the certificate, as follows:

A DISPUTE AS TO WHETHER THE DENIAL OF THIS CERTIFICATE APPLICATION OR ANY SUBSEQUENT SUSPENSION OR REVOCATION OF THE CERTIFICATE IS UNNECESSARY OR UNAUTHORIZED OR WAS IMPROPERLY, NEGLIGENTLY, OR UNLAWFULLY RENDERED, MAY BE DETERMINED BY SUBMISSION TO ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND NOT BY A LAWSUIT OR RESORT TO COURT PROCESS EXCEPT AS CALIFORNIA LAW PROVIDES FOR JUDICIAL REVIEW OF ARBITRATION PROCEEDINGS OR EXCEPT AS PROVIDED BY SECTION 17331.3 OF THE FINANCIAL CODE. THE APPLICANT MAY, SUBJECT TO AGREEMENT, SUBMIT ANY ISSUE ARISING FROM A DECISION BY FIDELITY CORPORATION TO DENY THIS CERTIFICATE APPLICATION OR TO SUSPEND OR REVOKE THE CERTIFICATE TO BE DECIDED BY BINDING NEUTRAL ARBITRATION. UPON AN AGREEMENT TO SUBMIT TO BINDING

NEUTRAL ARBITRATION, THE APPLICANT HAS NO RIGHT TO HAVE ANY DISPUTE CONCERNING THIS CERTIFICATE APPLICATION LITIGATED IN A COURT OR JURY TRIAL NOR ANY JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, EXCEPT AS SPECIFICALLY PROVIDED IN THE ESCROW LAW. ARBITRATION MAY BE COMPELLED AS PROVIDED BY LAW.

(f) There is no liability on the part of and no cause of action of any nature may arise against Fidelity Corporation or its members, directors, officers, employees, or agents, the State of California, the Department of Business Oversight, or any officer, agent, or employee of the state or the Department of Business Oversight for statements made by Fidelity Corporation in reports or recommendations made pursuant to this division, or for reports or recommendations made pursuant to this division to Fidelity Corporation by its members, directors, officers, employees, or agents, the State of California, the Department of Business Oversight, or any officer, agent, or employee of the state or the Department of Business Oversight, unless the information provided is false and the party making the statement or providing the false information does so with knowledge and malice. Reports or recommendations made pursuant to this section, or Section 17331.1, 17331.2, or 17331.3, are not public documents.

(g) There is no liability on the part of and no cause of action of any nature may arise against Fidelity Corporation or its members, directors, officers, employees, or agents, the State of California, the Department of Business Oversight, or an officer, agent, or employee of the state or the Department of Business Oversight for the release of any information furnished to Fidelity Corporation pursuant to this section unless the information released is false and the party, including Fidelity Corporation, its members, directors, officers, employees, or agents, the state, the Department of Business Oversight, or any officer, agent, or employee of the state or the Department of Business Oversight, who releases the false information does so with knowledge and malice.

(h) There is no liability on the part of and no cause of action of any nature may arise against Fidelity Corporation or its directors, officers, employees, or agents, for any decision to deny an application for a certificate or to suspend or revoke the certificate of any person or for the timing of any decision or the timing of any notice to persons or members thereof, or for any failure to deny an application under subdivision (a) of Section 17331.2. This subdivision does not apply to acts performed in bad faith or with malice.

(i) Fidelity Corporation, any member of Fidelity Corporation, an agent of Fidelity Corporation or of its members, or any person who uses any information obtained under this section for any purpose not authorized by this chapter is guilty of a misdemeanor.

(j) Section 17331, 17331.1, or 17331.2 does not constitute a restriction or limitation upon the obligation of Fidelity Corporation to indemnify members against loss, as provided in Sections 17310 and 17314. The failure to obtain a certificate, the denial of an application for a certificate, or the

suspension, cancellation, or revocation of a certificate does not limit the obligation of Fidelity Corporation to indemnify a member against loss.

(k) Notwithstanding Section 11105 of the Penal Code, Fidelity Corporation is entitled to receive state summary criminal history information and subsequent arrest notification from the Department of Justice as a result of fingerprint images and related information submitted to the Department of Justice by the Department of Business Oversight, pursuant to subdivision (g) of Section 17209, Section 17212.1, and subdivision (d) of Section 17414.1, by or on behalf of escrow agents, shareholders, officers, directors, trustees, managers, or employees of an escrow agent, directly or indirectly compensated by an escrow agent. The Department of Justice and Fidelity Corporation shall enter into an agreement to implement this subdivision. The Department of Business Oversight shall forward to Fidelity Corporation, weekly, a list of names of individual fingerprints submitted to the Department of Justice.

(*l*) (1) The fingerprint images and related information required pursuant to subdivision (d) shall be submitted by the Department of Business Oversight to the Department of Justice, in a manner established by the Department of Justice, for the purposes of obtaining information as to the existence and content of a record of state or federal convictions, state or federal arrests, and information as to the existence of and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(2) Upon receipt, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the Department of Business Oversight and a fitness determination to Fidelity Corporation pursuant to subdivision (p) of Section 11105 of the Penal Code.

(3) The Department of Justice shall charge a fee sufficient to cover the costs of processing the requests pursuant to this subdivision.

SEC. 42. Section 18405 of the Financial Code is amended to read:

18405. (a) On or before the 15th day of March of every year, each industrial loan company shall file with the commissioner an audit report containing audited financial statements together with such other relevant information as the commissioner may require relating to the company and to each place of business of the company. The audited financial statements shall include a balance sheet of the company prepared as of the last day of the preceding calendar year and statements of income and of surplus for such calendar year.

(b) The reports and financial statements referred to in subdivision (a) shall be prepared in accordance with generally accepted accounting principles and shall be accompanied by a report, certificate, or opinion of an independent certified public accountant or independent public accountant, and shall contain such relevant information as the commissioner may require.

The audits shall be conducted in accordance with generally accepted auditing standards and the rules and regulations of the commissioner.

(c) For good cause and upon written request, the commissioner may extend the time for compliance with subdivision (a).

(d) If the report, certificate, or opinion of the independent accountant referred to in subdivision (b) hereof is in any way qualified, the commissioner may require the company to take such action as he or she deems appropriate to permit an independent accountant to remove such qualification from the report, certificate, or opinion.

(e) The commissioner may reject any financial statement, report, certificate, or opinion filed pursuant to this section by notifying the company required to make such filing of its rejection and the cause thereof. Within 30 days after the receipt of such notice, the company shall correct such deficiency, and the failure so to do shall be deemed a violation of this division. The commissioner shall retain a copy of all filings so rejected.

SEC. 43. Section 22105.1 of the Financial Code is amended to read:

22105.1. (a) An applicant for a mortgage loan originator license shall apply by submitting the uniform form prescribed for such purpose by the Nationwide Mortgage Licensing System and Registry. The commissioner may require the submission of additional information or supporting documentation to the department.

(b) Section 461 of the Business and Professions Code shall not be applicable to the Department of Business Oversight when using a national uniform application adopted or approved for use by the Nationwide Mortgage Licensing System and Registry in connection with the SAFE Act.

(c) In connection with an application for a license as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including the following:

(1) Fingerprint images and related information, for purposes of performing a federal, or both a state and federal, criminal history background check.

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain both of the following:

(A) An independent credit report obtained from a consumer reporting agency.

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(d) The commissioner may ask the Nationwide Mortgage Licensing System and Registry to obtain state criminal history background check information on applicants described in subdivision (a) using the procedures set forth in subdivisions (e) and (f).

(e) If the Nationwide Mortgage Licensing System and Registry electronically submits fingerprint images and related information, as required by the Department of Justice, for an applicant for a mortgage loan originator license, for the purposes of obtaining information as to the existence and

content of a record of state convictions and state arrests and to the existence and content of a record of state arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal, the Department of Justice shall provide an electronic response to the Nationwide Mortgage Licensing System and Registry pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code, and shall provide the same electronic response to the commissioner.

(f) The Nationwide Mortgage Licensing System and Registry may request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in subdivision (a). The Department of Justice shall provide the same electronic response to the commissioner.

(g) The Department of Justice shall charge a fee sufficient to cover the cost of processing the requests described in this section.

SEC. 44. Section 22159.5 of the Financial Code is amended to read:

22159.5. (a) The commissioner may, as he or she deems necessary, require licensees to provide reports concerning their residential mortgage loan servicing activities, including, but not limited to, information similar to that collected in connection with the Mortgage Servicers Survey, first published by the Department of Business Oversight in December 2007. The commissioner is additionally authorized to seek and accept information provided on a voluntary basis by residential mortgage loan servicers not subject to the commissioner's jurisdiction. The commissioner shall post only aggregated survey results on the department's Internet Web site, and shall note the number of loan servicers submitting data included in the aggregated totals and the estimated percentage of outstanding mortgage loans to Californians that are serviced by these loan servicers, to the extent information on the number of outstanding loans is available from a reliable source. Nothing in this section is intended to reduce or change the commissioner's authority to request and demand reports under Sections 22150 and 22159.

(b) For purposes of this section, "mortgage loan servicing activity" means receiving more than three installment payments of principal, interest, or other amounts placed in escrow, pursuant to the terms of a mortgage loan, and performing services relating to that receipt or the enforcement of its receipt, on behalf of the holder of the note evidencing that loan.

SEC. 45. Section 22160 of the Financial Code is amended to read:

22160. The commissioner shall make and file annually with the Department of Business Oversight as a public record a composite of the annual reports and any comments on the reports that he or she deems to be in the public interest.

SEC. 46. Section 22756 of the Financial Code is amended to read:

22756. Notwithstanding any other law, any application for licensure, amendment to the application or registration document or notice filed under any of the laws administered by the Department of Business Oversight, or record otherwise required to be filed in this state as an electronic record pursuant to a nationwide central depository for information regarding

licensees, including mortgage loan originators, or any electronic record filed through the Nationwide Mortgage Licensing System and Registry, shall be deemed to be a valid original document upon reproduction to paper form by the Department of Business Oversight.

SEC. 47. Section 23070 of the Financial Code is amended to read:

23070. (a) The Legislature finds and declares that it is in the public interest for the administration and enforcement of this division to be undertaken by the Department of Business Oversight.

(b) It is therefore the intent of the Legislature to transfer the existing responsibilities relating to administration and enforcement of check cashers that engage in activities subject to this division from the Department of Justice to the Department of Business Oversight.

SEC. 48. Section 23071 of the Financial Code is amended to read:

23071. The Commissioner of Business Oversight and the Department of Business Oversight shall succeed to, and are vested with, all duties, powers, purposes, responsibilities, and jurisdiction of the Department of Justice as they relate to check cashers who engage in the activities subject to this division.

SEC. 49. Section 23072 of the Financial Code is amended to read:

23072. The Department of Business Oversight may use the unexpended balance of funds available for use in connection with the performance of duties of the Department of Justice to which the Department of Business Oversight succeeds pursuant to Section 23071.

SEC. 50. Section 23073 of the Financial Code is amended to read:

23073. All officers and employees of the Department of Justice who, on the operative date of this division, are performing any duty, power, purpose, responsibility, or jurisdiction to which the Department of Business Oversight succeeds, and who are serving in the civil service, other than as temporary employees or persons in positions exempted from civil service, shall be transferred to the Department of Business Oversight. The status, position, and rights of those persons shall not be affected by the transfer and shall be retained by those persons as officers and employees of the Department of Business Oversight, pursuant to Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code.

SEC. 51. Section 23074 of the Financial Code is amended to read:

23074. The Department of Business Oversight shall have possession and control of all records, criminal history information, papers, equipment, supplies, moneys, funds, appropriations, licenses, permits, contracts, claims, judgments, land, and other property, real or personal, connected with the administration of, or held for the benefit or use of, the Department of Justice for the performance of the functions transferred to the Department of Business Oversight pursuant to Section 23071.

SEC. 52. Section 23102 of the Financial Code is amended to read:

23102. The deferred deposits made pursuant to a permit issued under Section 1789.37 of the Civil Code prior to December 31, 2004, shall be subject to and enforced to the extent valid under Sections 1789.30 to 1789.37, inclusive, of the Civil Code, as if those sections were not repealed. Any

regulation, order, or other action adopted, prescribed, taken, or performed by the Department of Justice or by an officer of that department in connection with deferred deposit transactions made prior to December 31, 2004, shall continue to apply to those transactions. No suit, action, or other proceeding lawfully commenced by or against the Department of Justice or any other officer of the state in relation to deferred deposit transactions made prior to December 31, 2004, shall abate by reason of the transfer of authority concerning deferred deposit transactions to the Department of Business Oversight pursuant to Section 23071.

SEC. 53. Section 30217 of the Financial Code is amended to read:

30217. The commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this law, including rules defining any terms, whether or not used in this law, insofar as the definitions are not inconsistent with the provisions of this law. For the purposes of rules and forms, the commissioner may classify persons and matters within his jurisdiction and may prescribe different requirements for different classes. The commissioner may in his discretion waive any requirement of any rule or form in situations where in his opinion such requirement is not necessary in the public interest or for the protection of investors. All rules of the commissioner other than those relating solely to the internal administration of the Department of Business Oversight shall be made, amended, or rescinded in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 54. Section 50140 of the Financial Code is amended to read:

50140. (a) An applicant for a license as a mortgage loan originator shall apply by submitting the uniform form prescribed for that purpose by the Nationwide Mortgage Licensing System and Registry. The commissioner may require the submission of additional information or supporting documentation to the department.

(b) Section 461 of the Business and Professions Code shall not be applicable to the Department of Business Oversight when using a national uniform application adopted or approved for use by the Nationwide Mortgage Licensing System and Registry in connection with the SAFE Act.

(c) The commissioner shall, by rule, establish the timelines, fees, and assessments applicable to applicants for original mortgage loan originator licenses, license renewals, and license changes under this division.

(d) The commissioner may, by rule, require mortgage loan originator licensees to pay assessments through the Nationwide Mortgage Licensing System and Registry.

(e) In connection with an application for a license as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including the following:

(1) Fingerprint images and related information, for purposes of performing a federal, or both a state and federal, criminal history background check.

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain both of the following:

(A) An independent credit report obtained from a consumer reporting agency.

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(f) The commissioner may ask the Nationwide Mortgage Licensing System and Registry to obtain state criminal history background check information on applicants described in subdivision (a) using the procedures set forth in subdivisions (g) and (h).

(g) If the Nationwide Mortgage Licensing System and Registry electronically submits fingerprint images and related information, as required by the Department of Justice, for an applicant for a mortgage loan originator license, for the purposes of obtaining information as to the existence and content of a record of state convictions and state arrests and to the existence and content of a record of state arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal, the Department of Justice shall provide an electronic response to the Nationwide Mortgage Licensing System and Registry pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code, and shall provide the same electronic response to the commissioner.

(h) The Nationwide Mortgage Licensing System and Registry may request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in subdivision (a). The Department of Justice shall provide the same electronic response to the commissioner.

(i) The Department of Justice shall charge a fee sufficient to cover the cost of processing the requests described in this section.

SEC. 55. Section 50303 of the Financial Code is amended to read:

50303. Neither the commissioner nor any employee of the Department of Business Oversight shall be precluded from obtaining a residential mortgage loan from a lender licensed under this division, subject to the rules that may be adopted hereunder or pursuant to other proper authority.

SEC. 56. Section 50307.1 of the Financial Code is amended to read:

50307.1. The commissioner may, as he or she deems necessary, require licensees to provide reports concerning their residential mortgage loan servicing activities, including, but not limited to, information similar to that collected in connection with the Mortgage Servicers Survey, first published by the Department of Business Oversight in December 2007. The commissioner is additionally authorized to seek and accept information provided on a voluntary basis by residential mortgage loan servicers not subject to the commissioner's jurisdiction. The commissioner shall post only aggregated survey results on the department's Internet Web site, and shall note the number of loan servicers submitting data included in the aggregated totals and the estimated percentage of outstanding mortgage

loans to Californians that are serviced by these loan servicers, to the extent information on the number of outstanding loans is available from a reliable source. Nothing in this section is intended to reduce or change the commissioner's authority to request and demand reports under Section 50307.

SEC. 57. Section 50316.5 of the Financial Code is amended to read:

50316.5. Notwithstanding any other law, any application for licensure, amendment to the application or registration document or notice filed under any of the laws administered by the Department of Business Oversight, or record otherwise required to be filed in this state as an electronic record pursuant to a nationwide central depository for information regarding licensees, including mortgage loan originators, or any electronic record filed through the Nationwide Mortgage Licensing System and Registry, shall be deemed to be a valid original document upon reproduction to paper form by the Department of Business Oversight.

SEC. 58. Section 5970 of the Government Code is amended to read:

5970. As used in this chapter, the following phrases have the following meanings:

(a) "Person" means any broker, dealer, municipal securities dealer, investment advisor, or investment firm.

(b) "Regulatory agency" means the Department of Business Oversight, the securities administrators or other similar regulatory authority in any other state, the Securities and Exchange Commission, Financial Industry Regulatory Authority, the Municipal Securities Rulemaking Board, the Commodity Futures Trading Commission, or any other self-regulatory organization.

(c) "State or local government" means the state, any department, agency, board, commission, or authority of the state, or any city, city and county, county, public district, public corporation, authority, agency, board, commission, or other public entity.

SEC. 59. Section 6254.5 of the Government Code is amended to read:

6254.5. Notwithstanding any other provisions of law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Section 6254, 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

(a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.

(b) Made through other legal proceedings or as otherwise required by law.

(c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.

(d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.

(e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.

(f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.

(g) Of records relating to any person that is subject to the jurisdiction of the Department of Business Oversight, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or, if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Business Oversight.

(h) Made by the Commissioner of Business Oversight under Section 450, 452, 8009, or 18396 of the Financial Code.

(i) Of records relating to any person that is subject to the jurisdiction of the Department of Managed Health Care, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or, if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Managed Health Care.

SEC. 60. Section 6254.12 of the Government Code is amended to read:

6254.12. Any information reported to the North American Securities Administrators Association/Financial Industry Regulatory Authority and compiled as disciplinary records which are made available to the Department of Business Oversight through a computer system, shall constitute a public record. Notwithstanding any other provision of law, the Department of Business Oversight may disclose that information and the current license status and the year of issuance of the license of a broker-dealer upon written or oral request pursuant to Section 25247 of the Corporations Code.

SEC. 61. Section 6254.22 of the Government Code is amended to read:

6254.22. Nothing in this chapter or any other provision of law shall require the disclosure of records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulae or calculations for these payments, and contract negotiations with providers of health care for alternative rates for a period of three years after the contract is fully executed. The transmission of the

records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption. The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Managed Health Care in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

SEC. 62. Section 11840 of the Government Code is amended to read:

11840. The Legislature finds and declares all of the following:

(a) The current regulatory responsibility for medical services is spread among many governmental entities including all of the following:

(1) The Medical Board of California.

(2) The Department of Managed Health Care.

(3) The State Department of Health Care Services.

(b) This overlapping jurisdiction has resulted in multiple and duplicative audits of many physician offices, additional expense and hiring of additional staff to respond to duplicate requests for medical records, and the review of confidential medical records by a growing number of governmental entities.

(c) In the interest of reducing the number of separate times various public and private agencies review confidential medical records, streamlining the regulatory process, and reducing the redundant reviews of the offices of physicians, it is the intent of the Legislature to coordinate, to the extent feasible, as many of these regulatory functions as possible.

(d) In addition to government audits of physician offices, numerous private entities also conduct reviews of physician offices.

(e) It is in the public interest to achieve ultimately a uniform system of private and public auditing of physician offices and, thus, streamline the process as much as possible.

SEC. 63. Section 53344.1 of the Government Code is amended to read:

53344.1. (a) The legislative body may provide in the resolution of intention or the resolution of consideration, and in documents setting forth the rights of the debtholders that it shall reserve to itself, the right and authority to allow any interested owner of property within the district, subject to the provisions of this section and to those conditions as it may impose, and any applicable prepayment penalties as prescribed in the bond indenture or comparable instrument or document, to tender to the district treasurer in full payment or part payment of any installment of the special taxes or the interest or penalties thereon which may be due or delinquent, but for which a bill has been received, any bond or other obligation secured thereby, the bond or other obligation to be taken at par and credit to be given for the accrued interest shown thereby computed to the date of tender. The district treasurer shall thereupon cancel the bond debt and shall cause proper credit

therefor to be entered on the records of the district and in the office of the auditor and tax collector. If the legislative body agrees to allow bond tenders pursuant to this section or to Section 53356.8, the legislative body may, at its discretion, agree to distribute or direct its trustee or other agent to distribute by any means an offer to purchase bonds or other related inquiry to the holders of the bonds of the district, at the expense of the person requesting the mailing. Neither the legislative body, nor any of its officers, agents, or trustees shall be liable in any way for that distribution.

(b) The provisions of this subdivision apply to any tender of bonds pursuant to this section by an owner of property within the district who is delinquent in paying special taxes levied by this district when due. Bonds may be tendered pursuant to this subdivision only after all of the following conditions have been satisfied:

(1) The delinquent lot or parcel has been offered for sale as a result of a foreclosure judgment and the minimum price required to be paid for the lot or parcel was not received.

(2) The bonds to be tendered to the district were obtained by the property owner only after their prior owner was presented with a tender offer or solicitation as defined in this subdivision.

(A) For purposes of this subdivision, a "tender offer" or "solicitation" is a solicitation by any person or that person's agent by offering circular, memoranda, tender, or solicitation, or any other document or written, oral, or electronic communication for the purchase of the bonds from their then current owner. A person includes a natural person, corporation, company, partnership, limited liability company, limited liability partnership, association, or any other entity and a "tendering party" includes any person making a tender offer for bonds.

(B) Any tender offer or solicitation shall include all material information as required under federal and state securities laws and shall also include the following information, to the extent applicable:

(i) The name of the tendering party.

(ii) An individual who can be contacted to provide further information with respect to the tender.

(iii) The current holdings of bonds of the district by the tendering party and its affiliates.

(iv) The total face amount of the bonds being solicited.

(v) The price or method of determining the price per one thousand dollars ($1,000) in bonds being offered by the tendering party.

(vi) Whether the tendering party or any person affiliated with or related to the tendering party, or any employee, agent, or representative of the tendering party, is a property owner within the district that issued the bonds.

(vii) Whether the present intentions of the tendering party are to use the bonds for payment of special taxes or the purchase of property at a foreclosure sale pursuant to this section or Section 53356.8. This statement of present intentions shall not be construed to be binding on the tendering party.

(viii) The status of the bond redemption fund, construction fund, reserve fund, and any other funds of the district, and the special tax delinquency rate of the district, all of which data shall be the most recent available from the district and, in any event, shall apply to the state of the funds after the most recent payment of principal and interest on the bonds. The district shall provide the necessary data to the property owner within 10 days of receiving a written request and may charge a reasonable fee not to exceed its actual costs of providing the data. The district shall simultaneously release the same information to the general public. The property shall also provide the percentage of the delinquency attributable to the tendering party or any person affiliated with or related to the tendering party, or any employee, agent, or representative of the tendering party, for each of the three most recent fiscal years.

(ix) If the tendering party owns or leases property in the district that issued the bonds, the development plans for that property and an update on the current status of development of that property and of any zoning, planning, or other permits or approvals needed for development of the property to proceed.

(x) Any other material information available to the tendering party and not generally available to the public that would significantly affect the market value of the bonds of the district.

(C) The tendering party shall notify the legislative body of his or her intent to make a tender offer or solicitation at least simultaneously with making any offer or solicitation.

(D) The tendering party shall provide a copy of the solicitation to the Department of Business Oversight prior to five working days after notifying the legislative body pursuant to subparagraph (C).

(3) The tendering property owner provides the legislative body with a negative assurance from counsel representing the property owner that no misleading or other information has come to the opining party's attention after reasonable investigation, that would lead the party providing the negative assurance to believe that the tender was in violation of federal or state securities laws.

(4) The tendering property owner delivers to the legislative body of the district that issued the bonds subject to the tender, a certificate to the effect that the tender information is accurate in all material respects and does not omit to state a material fact necessary in order to make the statements included in the tender information not misleading, except that the certificate need not provide any assurances as to the accuracy of the information as to the bond fund balances and tax payment information provided by the district.

(c) The provisions of this subdivision apply to any tender of bonds pursuant to this section by any owner of property within the district who is not delinquent in paying special taxes on any property within the district. A person subject to this subdivision shall be deemed to be a person whose relationship to the issuer may give him or her access, directly or indirectly, to material information about the issuer not generally available to the public, and the provisions of Section 25402 of the Corporations Code apply to any

purchase or sale of securities by that person in connection with the tender transaction. For purposes of this subdivision, the "issuer" includes the district, the local agency that created the district, and any owner of property within the district. At any time prior to tendering bonds to the district pursuant to this section, any person subject to this subdivision shall deliver to the legislative body of the district a certificate that he or she has complied with this subdivision and applicable federal and state securities laws.

SEC. 64. Section 53638 of the Government Code is amended to read:

53638. (a) The deposit shall not exceed the shareholder's equity of any depository bank. For the purposes of this subdivision, shareholder's equity shall be determined in accordance with Section 463 of the Financial Code, but shall be deemed to include capital notes and debentures.

(b) The deposit shall not exceed the total of the net worth of any depository savings association or federal association, except that deposits not exceeding a total of five hundred thousand dollars ($500,000) may be made to a savings association or federal association without regard to the net worth of that depository, if such deposits are insured or secured as required by law.

(c) The deposit to the share accounts of any regularly chartered credit union shall not exceed the total of the unimpaired capital and surplus of the credit union, as defined by rule of the Commissioner of Financial Institutions, except that the deposit to any credit union share account in an amount not exceeding five hundred thousand dollars ($500,000) may be made if the share accounts of that credit union are insured or guaranteed pursuant to Section 14858 of the Financial Code or are secured as required by law.

(d) The deposit in investment certificates of a federally insured industrial loan company shall not exceed the total of the unimpaired capital and surplus of the insured industrial loan company.

SEC. 65. Section 54956.87 of the Government Code is amended to read:

54956.87. (a) Notwithstanding any other provision of this chapter, the records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulas or calculations for these payments, and contract negotiations with providers of health care for alternative rates are exempt from disclosure for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

(b) Notwithstanding any other provision of law, the governing board of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division

2 of the Health and Safety Code) and that is governed by a county board of supervisors may order that a meeting held solely for the purpose of discussion or taking action on health plan trade secrets, as defined in subdivision (f), shall be held in closed session. The requirements of making a public report of action taken in closed session, and the vote or abstention of every member present, may be limited to a brief general description without the information constituting the trade secret.

(c) Notwithstanding any other provision of law, the governing board of a health plan may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by the health plan with providers of health care services concerning all matters related to rates of payment. The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

(d) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(e) The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Managed Health Care in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(f) For purposes of this section, "health plan trade secret" means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(1) The secrecy of the information is necessary for the health plan to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(2) Premature disclosure of the trade secret would create a substantial probability of depriving the health plan of a substantial economic benefit or opportunity.

SEC. 66. Section 1280.7 of the Insurance Code is amended to read:

1280.7. (a) This chapter and the other provisions of this code, except as set forth in this paragraph, shall not apply to or affect unincorporated interindemnity or reciprocal or interinsurance contracts between members of a cooperative corporation, organized and operating under Part 2 (commencing with Section 12200) of Division 3 of Title 1 of the Corporations Code, whose members consist solely of physicians and surgeons licensed in California, which contracts indemnify solely in respect to medical malpractice claims against those members, and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration. However, interindemnity, reciprocal, or interinsurance contracts with respect to the following types of claims, in addition to medical malpractice claims, may be entered into in conjunction with contracts with

respect to medical malpractice claims if the reserve trust fund is at least twenty million dollars ($20,000,000):

(1) Bodily injury or property damage arising out of the conduct and of the operations of the member's professional practice occurring on the member's premises.

(2) Officers', directors', and administrators' liability, to the extent that the member's professional practice is operated as a professional corporation or group.

(3) Nonowned automobile coverage.

The provisions of Chapter 3 (commencing with Section 330) of Part 1 of Division 1 shall apply to unincorporated interindemnity or reciprocal or interinsurance contracts. Those unincorporated interindemnity or reciprocal or interinsurance contracts shall comply with all of the following requirements:

(b) Each participating member shall enter into and, concurrently therewith, receive an executed copy of a trust agreement, which shall govern the collection and disposition of all funds of the interindemnity arrangement.

The trust agreement shall, at a minimum, contain provision for all the following matters:

(1) An initial trust corpus of not less than ten million dollars ($10,000,000), which corpus shall be a trust fund to secure enforcement of the interindemnity arrangement. The average contribution to the initial trust corpus shall be not less than twenty thousand dollars ($20,000) per member participating in the interindemnity arrangement. The average contribution to the trust fund shall continue at all times to be not less than twenty thousand dollars ($20,000) per participating member unless the interindemnity arrangement is qualified to admit members under the terms of subdivision (k). No such interindemnity arrangement shall become operative until the requisite minimum reserve trust fund has been established by contributions from not fewer than 500 participating members.

(2) The reserve trust fund created by the trust agreement shall be administered by a board of trustees of three or more members, all of whom shall be physicians and surgeons licensed in California, participating members in the interindemnity arrangement, and elected biennially or more frequently by at least a majority of all members participating in the interindemnity arrangement.

(3) The members of the board of trustees are fiduciaries and the board shall be the custodian of all funds of the interindemnity arrangement, and all those funds shall be deposited in the bank or banks and savings and loan associations in California as the board may designate. Each account shall require two or more signatories for withdrawal of funds in excess of ten thousand dollars ($10,000). The authorized signatories shall be appointed by the board and, as to any withdrawal in excess of one hundred thousand dollars ($100,000), at least one of the two or more authorized signatories shall be a physician and surgeon licensed in California and a participating member in the interindemnity arrangement. Each signatory on those accounts shall maintain, at all times while empowered to draw on those funds, for

the benefit of the interindemnity arrangement, a bond against loss suffered through embezzlement, mysterious disappearance, holdup or burglary, or other loss issued by a bonding company licensed to do business in California in a penal sum of not less than one hundred thousand dollars ($100,000).

(4) All funds held in trust that are in excess of current financial needs shall be invested and reinvested from time to time, under the direction of the board of trustees, in eligible securities, as defined in Section 16430 of the Government Code, in portfolios of eligible securities, in exchange traded financial futures contracts or exchange traded options contracts to hedge investment in those eligible securities, or in certificates of deposits or time deposits issued by banks and savings and loan associations in California duly insured by instrumentalities of the United States government.

Pursuant to the authority contained in Section 1 of Article XV of the California Constitution, the restrictions upon rates of interest contained in Section 1 of Article XV of the California Constitution shall not apply to any obligations of, loans made by, or forbearances of, any trust established by a cooperative corporation providing indemnity pursuant to this section.

(5) The income earned on the corpus of the trust fund shall be the source for the payment of the claims, costs, judgments, settlements, and costs of administration contemplated by the interindemnity arrangement, and to the extent the income is insufficient for those purposes, the board of trustees shall have the power and authority to assess participating members for all amounts necessary to meet the obligations of the interindemnity arrangement in accordance with the terms thereof. If necessary in the best interests of the interindemnity arrangement, the board of trustees may make assessments to increase the corpus of the trust fund in accordance with the terms of the interindemnity arrangement. Any assessment levied against a member shall be the personal obligation of the member. Any person who obtains a final judgment of recovery for medical malpractice or other liability authorized by this section against a member of the interindemnity arrangement shall have, in addition to any other remedy, the right to assert directly all rights to indemnification that the judgment debtor has under the interindemnity arrangement. The final judgment shall be a lien on the reserve trust fund to secure payment of the judgment, limited to the extent of the judgment debtor's rights to indemnification.

Any change in the assessment agreement between the interindemnity arrangement and its membership shall be submitted to the entire membership for ratification. If the ratification process is to be performed by a mail ballot, a ballot shall be sent to each member by first-class mail, postage prepaid. Within 45 days after the posted date on the mail ballot, each member who decides to vote on the assessment change shall return his or her ballot to the interindemnity arrangement for the tallying of the ballots. An affirmative vote of 75 percent of those voting shall be required to effectuate any change in the assessment agreement.

If a change in the assessment agreement is to be submitted to members at a properly called meeting, the membership shall be notified of the meeting and the proposed assessment change by first-class mail, postage prepaid,

posted at least 45 days prior to the meeting. Seventy-five percent of those present in person or by proxy at the meeting shall be required to effectuate any change in the assessment agreement.

(6) Each participating member shall be covered by the interindemnity arrangement for not less than one million dollars ($1,000,000) for each occurrence of professional negligence or other liability authorized by this section, with the terms and conditions of the coverage to be specified in the trust agreement, except that the interindemnity arrangement may provide participating members with an aggregate limit for all payments on behalf of the member and may provide participating members with less than one million dollars ($1,000,000) of coverage for each occurrence of professional negligence or other liability authorized by this section if the interindemnity arrangement obtains for the benefit of the members reinsurance of excess limits coverage in an amount that when added to the coverage provided by the interindemnity arrangement would equal not less than one million dollars ($1,000,000) for each occurrence of professional negligence or other liability authorized by this section.

Any change in the coverage provided by the trust agreement between the interindemnity arrangement and its membership shall be submitted to the entire membership for ratification. If the ratification process is to be performed by a mail ballot, a ballot shall be sent to each member by first-class mail, postage prepaid. Within 45 days after the posted date on the mail ballot, each member who decides to vote on the coverage change shall return his or her ballot to the interindemnity arrangement for the tallying of the ballot. An affirmative vote of 75 percent of those voting shall be required to effectuate any change in the coverage provided by the trust agreement, except that at least 50 percent of the entire membership must agree to any change.

If any change is to be submitted to members at a properly called meeting, the membership shall be notified of the meeting and the proposed coverage change by first-class mail, postage prepaid, posted at least 45 days prior to the meeting. An affirmative vote of 75 percent of the membership present at the meeting, in person or by proxy, shall be required to effectuate any change, except that at least 50 percent of the entire membership must agree to any change.

(7) Withdrawal of all, or any portion of, the corpus of the reserve trust fund shall be upon the written authorization signed by at least two-thirds of the members of the board of trustees.

(8) The board of trustees shall cause both of the following to be furnished to each member participating in the interindemnity arrangement, and to be filed with the Commissioner of Business Oversight:

(A) Within 90 days after the end of each fiscal year, a statement of the assets and liabilities of the interindemnity arrangement as of the end of that year, a statement of the revenue and expenditures of the interindemnity arrangement, and a statement of the changes in corpus of the reserve trust for that year, in each case accompanied by a certificate signed by a firm of independent certified public accountants selected by the board of trustees

indicating that the firm has conducted an audit of those statements in accordance with generally accepted auditing standards and indicating the results of the audit.

(B) Within 45 days after the end of each of the first three quarterly periods of each fiscal year, a statement of the assets and liabilities of the interindemnity arrangement as of the end of the quarterly period, a statement of the revenue and expenditures of the interindemnity arrangement, and a statement of the changes in corpus of the reserve trust for the period, in each case accompanied by a certificate signed by a majority of the members of the board of trustees to the effect that the statements were prepared from the official books and records of the interindemnity arrangement.

(C) In addition to the statements required to be filed pursuant to this paragraph, the board of trustees shall annually file with the Commissioner of Business Oversight an authorization for disclosure to the commissioner of all financial records pertaining to the interindemnity arrangement. For the purpose of this subparagraph, the authorization for disclosure shall also include the financial records of any association, partnership, or corporation that has management or control of the funds or the operation of the interindemnity arrangement.

(9) The trust agreement shall also provide for all the following:

(A) In the event a participating member who is in full compliance with the trust agreement, including the payment of all outstanding dues and assessments, dies, the initial contribution made by the decedent shall be returned to the member's estate or designated beneficiary; the indemnity coverage shall continue for the benefit of the decedent's estate in respect of occurrences during the time the decedent was a participating member; and neither the person receiving the repayment of the initial contribution nor the decedent's estate shall be responsible for any assessments levied following the death of the member.

(B) A participating member who is then in full compliance with the trust agreement and who has reached the age of 65 years and who has retired completely from the practice of medicine may elect to retire from the interindemnity arrangement, in which case the member shall not be responsible for assessments levied following the date notice of retirement is given to the trust. Following that retirement, the indemnity coverage shall continue for the benefit of the member in respect of occurrences prior to the time the member retired from the interindemnity arrangement. That retired member's initial contribution shall be repaid 10 years from the date the notice of retirement is received by the trust, or an earlier date as specified in the trust agreement. The board of trustees may reduce the age for retirement to not less than 55 years subject to all other requirements in this paragraph and any additional requirements deemed necessary by the board.

(C) During any period in which a participating member, who is then in full compliance with the trust agreement, has, in the judgment of the board of trustees, become unable to perform any and every duty of his or her regular professional occupation, the participating member may request disability status in accordance with the terms of the interindemnity

arrangement. During any period of disability status, the member shall not be responsible for assessments levied during the period and, if so provided in the interindemnity arrangement, all indemnity coverage, both as to defense and payment of claims, shall terminate as to occurrences arising out of the actions of the participating member during the period of disability status.

(D) In the event a participating member fails to pay any assessment when due, the board of trustees may terminate that person's membership status if the failure to pay is not cured within 30 days from the date the assessment was due. Upon that termination the former participating member shall not be entitled to the return of all or any part of his or her initial contribution, and the indemnity coverage shall thereupon terminate as to all claims then pending against that person and in respect to all occurrences prior to the date of that termination of membership. However, in the event the interindemnity arrangement is then providing legal defense services to that person, the interindemnity arrangement shall continue to provide those services for a period of 10 days following that termination.

(E) In the event a participating member fails to comply with any provision of the trust agreement (other than a failure to pay assessments when due), the board of trustees may terminate that person's membership status if the failure to comply is not cured within 60 days from the date the person is notified of the failure, provided that before that membership status may be terminated the person shall be given the right to call for a hearing before the board of trustees (to be held before the expiration of the 60-day period), at which hearing the person shall be given the opportunity to demonstrate to the board of trustees that no failure to comply has occurred or, if it has occurred, that it has been cured. Upon that termination, the former participating member shall not be entitled to the return of all or any part of his or her initial contribution, and the indemnity coverage shall thereupon terminate as to all claims then pending against the person and in respect to all occurrences prior to the date of the termination of membership. However, in the event the interindemnity arrangement is then providing legal defense services to that person, the interindemnity arrangement shall continue to provide those services for a period of 10 days following the termination.

(F) A participating member who is then in full compliance with the trust agreement may elect voluntarily to terminate his or her membership in the interindemnity arrangement. Upon that voluntary termination, that person may further elect to cease being responsible for future assessments, or to continue to pay those assessments until the time as the person's initial contribution is repaid. In the event the person elects to cease being responsible for future assessments, the indemnity coverage shall thereupon terminate and the person shall either be responsible for his or her own exposure for acts committed while a participating member in the interindemnity arrangement, or he or she may request the interindemnity arrangement to purchase or provide, at the cost of the person, coverage for that exposure. The initial contribution of the person shall be repaid on the 10th anniversary of the date the contribution was made. In the event the person elects to continue to be responsible for assessments, the indemnity

coverage shall continue in respect of occurrences prior to the date of the voluntary termination, and the initial contribution of the person shall be repaid at the time as the board of trustees is satisfied that (i) there are no claims pending against the person in respect of occurrences during the time the person was a participating member, and (ii) the statute of limitations has run on all claims that might be asserted against that person in respect of occurrences during that time. In no event shall that repayment be made earlier than the 10th anniversary of the date the contribution was made.

Any person whose membership in an interindemnity arrangement is involuntarily terminated for failure to pay assessments or who voluntarily terminates that membership and elects to be responsible for his or her own exposure for acts committed while a participating member, shall not be eligible to become a member of any other interindemnity arrangement for a period of five years after the termination unless, on the effective date of the act which amended this section during the 1985–86 Regular Session, the person had on file with the Department of Business Oversight a copy of a subscription agreement signifying the person's agreement to transfer membership or had paid a minimum of ten thousand dollars ($10,000) to another interindemnity arrangement that was granted a permit to organize prior to January 1, 1985.

(G) The board of trustees shall have the right to terminate the membership of a participating member if the board of trustees determines that the termination is in the best interests of the interindemnity arrangement even though that person has complied with all of the provisions of the trust agreement. A termination may be effected only if at least two-thirds of the members of the board of trustees indicate in writing their decision to terminate. If the board of trustees proposes to terminate a member, the member shall have the right to call a special meeting of all participating members in accordance with the rules established by the board of trustees for the purpose of voting on whether or not the member shall be terminated. The member shall not be terminated if at least two-thirds of the participating members present, in person or by proxy, indicate that the member should not be terminated. In the event a member is terminated, the person shall elect either: (i) to request the return of his or her initial contribution, in which case the contribution shall be repaid and the indemnity coverage shall thereupon terminate as to all claims then pending against the person and in respect to all occurrences prior to the date of the termination of membership. However, in the event the interindemnity arrangement is then providing legal defense services to the person, the interindemnity arrangement shall continue to provide those services for a period of 30 days to enable the person to assume his or her own defense; or (ii) to release all rights to the return of the initial contribution, in which case the indemnity coverage shall continue for the benefit of the member in respect of occurrences during the time the person was a participating member and the person shall have no responsibility for assessments levied following that termination. The interindemnity arrangement may provide that if a member is terminated and fails to make the election set forth herein within 45 days of the date of

notification of termination of membership, the participating member shall be deemed to have elected to release all rights to a return of his or her initial contribution, in which case indemnity coverage shall apply for the benefit of the member with respect to occurrences occurring prior to the termination.

(10) Each member participating in the interindemnity arrangement shall have the right of access to, and the inspection of, the books and records of the interindemnity arrangement, which rights shall be similar to the corporate shareholders pursuant to Section 3003 of the Corporations Code, or, commencing January 1, 1977, Sections 1600 to 1605, inclusive, of the Corporations Code.

(11) There shall be a meeting of all members participating in the interindemnity arrangement, at least annually, after not less than 10 days' written notice has been given, at a location reasonably convenient to the participating members and on a date that is within a reasonable period of time following the distribution of the annual financial statements.

(12) Notwithstanding Sections 12453 and 12703 of the Corporations Code, on any matter to be voted upon by the membership at either a regular or special meeting, a member shall have the right to vote in person or by written proxy filed with the corporate secretary prior to the meeting. No proxy shall be made irrevocable, nor be valid beyond the earliest of the following dates:

(A) The date of expiration set forth in the proxy.

(B) The date of termination of membership.

(C) Eleven months from the date of execution of the proxy.

(D) Such time as may be specified in the bylaws, not to exceed 11 months.

(13) The interindemnity arrangement, and the reserve trust fund incident thereto, shall be subject to termination at any time by the vote or written consent of not less than three-fourths of the participating members.

(c) The board of trustees shall cause to be recorded with the office of the county recorder of the county of the principal place of business of the interindemnity arrangement within 90 days following the end of each fiscal year, a written statement, executed by a majority of the board of trustees under penalty of perjury, reciting that each member participating in the interindemnity arrangement was mailed a copy of the annual financial statement and quarterly audit certificates by first-class mail, postage prepaid, required pursuant to paragraph (8) of subdivision (a).

(d) Each person solicited to become a participating member in an interindemnity arrangement shall receive in writing, at least 48 hours prior to the execution by the prospective participating member of the trust agreement, and at least 48 hours prior to the payment by the prospective participating member of any consideration in connection with the interindemnity arrangement, the following information:

(1) A copy of the articles of incorporation and bylaws of the cooperative corporation and a copy of the form of trust agreement to be executed by the prospective participating member.

(2) A disclosure statement regarding the interindemnity arrangement. The disclosure statement shall contain on the first or cover page a legend in boldface type reading substantially as follows:

"THE INTERINDEMNITY ARRANGEMENT CONTEMPLATED HEREIN PROVIDES THAT PARTICIPATING MEMBERS HAVE UNLIMITED PERSONAL LIABILITY FOR ASSESSMENTS THAT MAY BE LEVIED TO PAY FOR THE PROFESSIONAL NEGLIGENCE OR OTHER LIABILITY AUTHORIZED BY THIS SECTION. NO ASSURANCES CAN BE GIVEN REGARDING THE AMOUNT OR FREQUENCY OF ASSESSMENTS WHICH MAY BE LEVIED, OR THAT ALL PARTICIPATING MEMBERS WILL MAKE TIMELY PAYMENT OF THEIR ASSESSMENTS TO COVER THE PROFESSIONAL NEGLIGENCE OR OTHER LIABILITY AUTHORIZED BY THIS SECTION."

(3) The disclosure statement shall further contain all of the following information:

(A) The amount, nature, and terms and conditions of the professional negligence or other liability relating to a member's professional practice coverage available under the interindemnity arrangement.

(B) The amount of the initial contribution required of each participating member and a statement of the minimum number of members and aggregate contributions required for the interindemnity arrangement to commence.

(C) The names, addresses, and professional experience of each member of the board of trustees.

(D) The requirements for admission as a participating member.

(E) A statement of the services to be provided under the interindemnity arrangement to each participating member.

(F) A statement regarding the obligation of each member to pay assessments and the consequences for failure to do so.

(G) A statement of the rights and obligations of a participating member in the event the member dies, retires, becomes disabled, or terminates participation for any reason, or the interindemnity arrangement terminates for any reason.

(H) A statement regarding the services to be provided, indicating whether these services will be delegated to others pursuant to a contractual arrangement. For those services delegated to others pursuant to a contractual arrangement, a statement fully disclosing and itemizing all consideration received directly or indirectly under the arrangement, and indicating what the consideration is for, and how, when, and to whom the consideration will be paid.

(I) A statement of the voting rights of the members and the circumstances under which participation of a member may be terminated and under which the interindemnity arrangement may be terminated.

(J) If any statement of estimated or projected financial information for the interindemnity arrangement is used, a statement of the estimation or projection and a summary of the data and assumptions upon which it is based.

(4) A list with the names and addresses of current participating members of the interindemnity arrangement.

(e) No officer, director, trustee, employee, or member of the interindemnity arrangement or the cooperative corporation shall receive, or be entitled to receive, any payment, bonus, salary, income, compensation, or other benefit whatsoever, either from the reserve trust fund or the income therefrom or from any other funds of the interindemnity arrangement or the members thereof based on the number of participating members, or the amount of the reserve trust fund or other funds of the interindemnity arrangement.

(f) A peer review committee or committees shall be established by the trust agreement to review the qualifications of any physician and surgeon to participate or continue to participate in the interindemnity arrangement, and to review the quality of medical services rendered by any participating member, as well as the validity of medical malpractice claims made against participating members. Any physician and surgeon, prior to becoming a participating member of the interindemnity arrangement, shall be reviewed and approved by a majority of the members of the peer review committee. No peer review committee, or any of its members, shall be liable for any action taken by the committee in reviewing the qualifications of a physician and surgeon to participate or continue to participate, or the quality of medical services rendered, or the validity of a medical malpractice claim, unless it is alleged and proved that the action was taken with actual malice.

(g) The following are hereby defined as unfair methods of competition and deceptive acts or practices with respect to cooperative corporations or interindemnity arrangements provided for in this section:

(1) Making any false or misleading statement as to, or issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement misrepresenting the terms of any interindemnity arrangement or the benefits or advantages promised thereby, or making any misleading representation or any misrepresentation as to the financial condition of the interindemnity arrangement, or making any misrepresentation to any participating member for the purpose of inducing or tending to induce the member to lapse, forfeit, or surrender his or her rights to indemnification under the interindemnity arrangement. It shall be a false or misleading statement to state or represent that a cooperative corporation or interindemnity arrangement is or constitutes “insurance” or an “insurance company” or an “insurance policy.”

(2) Making or disseminating or causing to be made or disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatsoever, any statement containing any assertion, representation, or statement with respect to those cooperative corporations or interindemnity arrangements, or with respect to any person in the conduct of those cooperative corporations or interindemnity arrangements, which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or

misleading. It shall be a false or misleading statement to state or represent that a cooperative corporation or interindemnity arrangement is or constitutes "insurance" or an "insurance company" or an "insurance policy."

(3) Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in an unreasonable restraint of, or monopoly in, those cooperative corporations or interindemnity arrangements.

(4) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, or delivered to any person, or placed before the public any false statement of financial condition of a cooperative corporation or interindemnity arrangement with intent to deceive.

(5) Making any false entry in any book, report, or statement of a cooperative corporation or interindemnity arrangement with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom a cooperative corporation or interindemnity arrangement is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to a cooperative corporation or interindemnity arrangement in any book, report, or statement of a cooperative corporation or interindemnity arrangement.

(6) Making or disseminating, or causing to be made or disseminated, before the public in this state, in any newspaper or other publication, or any other advertising device, or by public outcry or proclamation, or in any other manner or means whatsoever, whether directly or by implication, any statement that a cooperative corporation or interindemnity arrangement is a member of the California Insurance Guarantee Association, or insured against insolvency as defined in Section 119.5. This paragraph shall not be interpreted to prohibit any activity of the California Insurance Guarantee Association or of the commissioner authorized, directly or by implication, by Article 14.2 (commencing with Section 1063) of Chapter 1.

(7) Knowingly committing or performing with a frequency as to indicate a general business practice any of the following unfair claims settlement practices:

(A) Misrepresenting to claimants pertinent facts or provisions relating to any coverage at issue.

(B) Failing to acknowledge and act promptly upon communications with respect to claims arising under those interindemnity arrangements.

(C) Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under those interindemnity arrangements.

(D) Failing to affirm or deny coverage of claims within a reasonable time after proof of claim requirements have been completed and submitted by the participating member.

(E) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.

(F) Compelling participating members to institute litigation to recover amounts due under an interindemnity arrangement by offering substantially less than the amounts ultimately recovered in actions brought by those participating members when those participating members have made claims under those interindemnity arrangements for amounts reasonably similar to the amounts ultimately recovered.

(G) Attempting to settle a claim by a participating member for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application for membership in an interindemnity arrangement.

(H) Attempting to settle claims on the basis of an interindemnity arrangement that was altered without notice to the participating member.

(I) Failing, after payment of a claim, to inform participating members, upon request by them, of the coverage under which payment has been made.

(J) Making known to claimants a practice of the cooperative corporation or interindemnity arrangement of appealing from arbitration awards in favor of claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

(K) Delaying the investigation or payment of claims by requiring a claimant, or his or her physician, to submit a preliminary claim report, and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

(L) Failing to settle claims promptly, where liability has become apparent, under one portion of an interindemnity arrangement in order to influence settlements under other portions of the interindemnity arrangement.

(M) Failing to provide promptly a reasonable explanation of the basis relied on in the interindemnity arrangement, in relation to the facts of applicable law, for the denial of a claim or for the offer of a compromise settlement.

(N) Directly advising a claimant not to obtain the services of an attorney.

(O) Misleading a claimant as to the applicable statute of limitations.

(h) Notwithstanding any contrary provisions of Part 2 (commencing with Section 12200) of Division 3 of Title 1 of the Corporations Code, it shall not be necessary to hold a meeting of members of the cooperative corporation for the purpose of electing directors if the bylaws provide the election may be held by first-class mail balloting. First-class mail balloting may also be used in conjunction with a meeting at which directors are to be elected and all mail ballots shall count toward establishing a quorum for the meeting for the limited purpose of the issues set forth in the mail ballot. Directors shall be elected as follows:

(1) The candidates receiving the highest number of votes, up to the number of directors to be elected, by a specified date at least 45 days but not later than 60 days after the ballots are first mailed, postage prepaid, to

the members (or the date of a meeting of members held in conjunction therewith) shall be elected.

(2) In the event that no candidate receives a majority of the votes cast for a vacant office, a runoff election shall be held between the two candidates receiving the highest number of votes cast. The runoff election shall be held at least 45 days but not more than 60 days after the ballots for the election are mailed, postage prepaid. In the event that there is more than one office for which no candidate receives a majority of the votes cast, the candidates for the runoff shall be twice the number of vacant offices, and shall be those persons who received the highest number of votes therefor.

Those first-class mail ballots shall be kept on file for a period of three months after all vacant board positions have been filled, and shall be subject to inspection at any reasonable time by any members of the cooperative corporation.

(i) No officer, director, trustee, or member of the interindemnity arrangement or the cooperative corporation, or any entity in which that person has a material financial interest, shall enter into or renew any transaction or contract with the trust unless the material facts as to the transaction or contract and as to the interest of the person are fully disclosed to the participating members, and the transaction or contract is approved by an affirmative vote of at least 75 percent of the membership present at a meeting, in person or by proxy. If any transaction or contract is to be submitted to members at a properly called meeting, the membership shall be notified of the meeting and of the transaction or contract by first-class mail, postage prepaid, at least 45 days prior to the meeting.

(j) Services provided to the trust pursuant to a delegated contractual arrangement shall be embodied in a written contract. Each written contract shall provide for reasonable consideration to the parties. In addition, each written contract shall be disclosed annually to participating members in a disclosure report containing the information described in subparagraph (H) of paragraph (3) of subdivision (d). The disclosure report shall be sent to participating members by first-class mail, postage prepaid, and shall be mailed separately from any statements, records, or other documents. The disclosure requirements of this subdivision shall apply to all existing and future written contracts.

(k) Upon request of the Commissioner of Business Oversight, an interindemnity arrangement shall immediately forward to the commissioner a current list of participating members, including the names, addresses, and telephone numbers of those members.

(*l*) Notwithstanding any provision to the contrary, whenever the membership of a cooperative organization, organized pursuant to Part 2 (commencing with Section 12200) of Division 3 of Title 1 of the Corporations Code and consisting solely of physicians and surgeons licensed in this state amounts to 2,000 or more members and the trust fund is at least forty million dollars ($40,000,000), which is available to the public for malpractice claims or other claims authorized by this section, the cooperative is authorized to admit members without a contribution to that trust fund if

assessments are charged to each of those members within the first 50 months in an amount equal to the amount of the contribution to the reserve fund that would otherwise be required.

SEC. 67. Section 12693.35 of the Insurance Code is amended to read:

12693.35. Participating health, dental, and vision plans shall have, but need not be limited to, all of the following operating characteristics satisfactory to the board in consultation with the plan's licensing or regulatory oversight agency:

(a) Strong financial condition, including the ability to assume the risk of providing and paying for covered services. A participating plan may utilize reinsurance, provider risk sharing, and other appropriate mechanisms to share a portion of the risk.

(b) Adequate administrative management.

(c) A satisfactory grievance procedure.

(d) Participating plans that contract with or employ health care providers shall have mechanisms to accomplish all of the following, in a manner satisfactory to the board:

(1) Review the quality of care covered.

(2) Review the appropriateness of care covered.

(3) Provide accessible health care services.

(e) (1) Before the effective date of the contract, the participating health plan shall have devised a system for identifying in a simple and clear fashion both in its own records and in the medical records of subscribers the fact that the services provided are provided under the program.

(2) Throughout the duration of the contract, the plan shall use the system described in paragraph (1).

(f) Plans licensed by the Department of Managed Health Care shall be deemed to meet the requirements of subdivisions (a) to (d), inclusive, of this section.

SEC. 68. Section 14053 of the Insurance Code is amended to read:

14053. In lieu of the surety bond required by this article there may be deposited with the State of California the sum of two thousand dollars ($2,000) in cash, or evidence of deposit of the sum of two thousand dollars ($2,000) in banks authorized to do business in this state and insured by the Federal Deposit Insurance Corporation, or investment certificates or share accounts in the amount of two thousand dollars ($2,000) issued by a savings association doing business in this state and insured by the Federal Deposit Insurance Corporation, or evidence of a certificate of funds or share account of the sum of two thousand dollars ($2,000) in a credit union, as defined in Section 14000 of the Financial Code, whose share deposits are guaranteed by the National Credit Union Administration or guaranteed by any other agency approved by the Department of Business Oversight.

SEC. 69. Section 15036 of the Insurance Code is amended to read:

15036. In lieu of the surety bond required by this chapter there may be deposited with the State of California the sum of twenty thousand dollars ($20,000) in cash, or evidence of deposit of the sum of twenty thousand dollars ($20,000) in banks authorized to do business in this state and insured

by the Federal Deposit Insurance Corporation, or investment certificates or share accounts in the amount of twenty thousand dollars ($20,000) issued by a savings association doing business in this state and insured by the Federal Deposit Insurance Corporation, or evidence of a certificate of funds or share account of the sum of twenty thousand dollars ($20,000) in a credit union as defined in Section 14000 of the Financial Code whose share deposits are guaranteed by the National Credit Union Administration or guaranteed by any other agency approved by the Department of Business Oversight.

SEC. 70. Section 4600.5 of the Labor Code is amended to read:

4600.5. (a) Any health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, a disability insurer licensed by the Department of Insurance, or any entity, including, but not limited to, workers' compensation insurers and third-party administrators authorized by the administrative director under subdivision (e), may make written application to the administrative director to become certified as a health care organization to provide health care to injured employees for injuries and diseases compensable under this article.

(b) Each application for certification shall be accompanied by a reasonable fee prescribed by the administrative director, sufficient to cover the actual cost of processing the application. A certificate is valid for the period that the director may prescribe unless sooner revoked or suspended.

(c) If the health care organization is a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, and has provided the Managed Care Unit of the Division of Workers' Compensation with the necessary documentation to comply with this subdivision, that organization shall be deemed to be a health care organization able to provide health care pursuant to Section 4600.3, without further application duplicating the documentation already filed with the Department of Managed Health Care. These plans shall be required to remain in good standing with the Department of Managed Health Care, and shall meet the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records prepared and submitted to the Department of Managed Health Care in compliance with the Knox-Keene Health Care Service Plan Act,

relating to financial solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees in compliance with the requirements of this code.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to Sections 1370 and 1370.1 of the Health and Safety Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(d) If the health care organization is a disability insurer licensed by the Department of Insurance, and is in compliance with subdivision (d) of Sections 10133 and 10133.5 of the Insurance Code, the administrative director shall certify the organization to provide health care pursuant to Section 4600.3 if the director finds that the plan is in good standing with the Department of Insurance and meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records prepared and submitted to the Department of Insurance in compliance with the Insurance Code relating to financial solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees consistent with the intent of this article.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to subdivision (d) of Section 10133 of the Insurance Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(e) If the health care organization is a workers' compensation insurer, third-party administrator, or any other entity that the administrative director determines meets the requirements of Section 4600.6, the administrative director shall certify the organization to provide health care pursuant to Section 4600.3 if the director finds that it meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records relating to provider accessibility, peer review, utilization review, quality assurance, advertising, disclosure, medical and financial audits, and grievance systems, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees consistent with the intent of this article.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to subdivision (d) of Section 10133 of the Insurance Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(7) Complies with the following requirements:

(A) An organization certified by the administrative director under this subdivision may not provide or undertake to arrange for the provision of health care to employees, or to pay for or to reimburse any part of the cost of that health care in return for a prepaid or periodic charge paid by or on behalf of those employees.

(B) Every organization certified under this subdivision shall operate on a fee-for-service basis. As used in this section, fee for service refers to the situation where the amount of reimbursement paid by the employer to the

organization or providers of health care is determined by the amount and type of health care rendered by the organization or provider of health care.

(C) An organization certified under this subdivision is prohibited from assuming risk.

(f) (1) A workers' compensation health care provider organization authorized by the Department of Business Oversight on December 31, 1997, shall be eligible for certification as a health care organization under subdivision (e).

(2) An entity that had, on December 31, 1997, submitted an application with the Commissioner of Business Oversight under Part 3.2 (commencing with Section 5150) shall be considered an applicant for certification under subdivision (e) and shall be entitled to priority in consideration of its application. The Commissioner of Business Oversight shall provide complete files for all pending applications to the administrative director on or before January 31, 1998.

(g) The provisions of this section shall not affect the confidentiality or admission in evidence of a claimant's medical treatment records.

(h) Charges for services arranged for or provided by health care service plans certified by this section and that are paid on a per-enrollee-periodic-charge basis shall not be subject to the schedules adopted by the administrative director pursuant to Section 5307.1.

(i) Nothing in this section shall be construed to expand or constrict any requirements imposed by law on a health care service plan or insurer when operating as other than a health care organization pursuant to this section.

(j) In consultation with interested parties, including the Department of Business Oversight and the Department of Insurance, the administrative director shall adopt rules necessary to carry out this section.

(k) The administrative director shall refuse to certify or may revoke or suspend the certification of any health care organization under this section if the director finds that:

(1) The plan for providing medical treatment fails to meet the requirements of this section.

(2) A health care service plan licensed by the Department of Managed Health Care, a workers' compensation health care provider organization authorized by the Department of Business Oversight, or a carrier licensed by the Department of Insurance is not in good standing with its licensing agency.

(3) Services under the plan are not being provided in accordance with the terms of a certified plan.

(*l*) (1) When an injured employee requests chiropractic treatment for work-related injuries, the health care organization shall provide the injured worker with access to the services of a chiropractor pursuant to guidelines for chiropractic care established by paragraph (2). Within five working days of the employee's request to see a chiropractor, the health care organization and any person or entity who directs the kind or manner of health care services for the plan shall refer an injured employee to an affiliated chiropractor for work-related injuries that are within the guidelines for

chiropractic care established by paragraph (2). Chiropractic care rendered in accordance with guidelines for chiropractic care established pursuant to paragraph (2) shall be provided by duly licensed chiropractors affiliated with the plan.

(2) The health care organization shall establish guidelines for chiropractic care in consultation with affiliated chiropractors who are participants in the health care organization's utilization review process for chiropractic care, which may include qualified medical evaluators knowledgeable in the treatment of chiropractic conditions. The guidelines for chiropractic care shall, at a minimum, explicitly require the referral of any injured employee who so requests to an affiliated chiropractor for the evaluation or treatment, or both, of neuromusculoskeletal conditions.

(3) Whenever a dispute concerning the appropriateness or necessity of chiropractic care for work-related injuries arises, the dispute shall be resolved by the health care organization's utilization review process for chiropractic care in accordance with the health care organization's guidelines for chiropractic care established by paragraph (2).

Chiropractic utilization review for work-related injuries shall be conducted in accordance with the health care organization's approved quality assurance standards and utilization review process for chiropractic care. Chiropractors affiliated with the plan shall have access to the health care organization's provider appeals process and, in the case of chiropractic care for work-related injuries, the review shall include review by a chiropractor affiliated with the health care organization, as determined by the health care organization.

(4) The health care organization shall inform employees of the procedures for processing and resolving grievances, including those related to chiropractic care, including the location and telephone number where grievances may be submitted.

(5) All guidelines for chiropractic care and utilization review shall be consistent with the standards of this code that require care to cure or relieve the effects of the industrial injury.

(m) Individually identifiable medical information on patients submitted to the division shall not be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(n) (1) When an injured employee requests acupuncture treatment for work-related injuries, the health care organization shall provide the injured worker with access to the services of an acupuncturist pursuant to guidelines for acupuncture care established by paragraph (2). Within five working days of the employee's request to see an acupuncturist, the health care organization and any person or entity who directs the kind or manner of health care services for the plan shall refer an injured employee to an affiliated acupuncturist for work-related injuries that are within the guidelines for acupuncture care established by paragraph (2). Acupuncture care rendered in accordance with guidelines for acupuncture care established pursuant to paragraph (2) shall be provided by duly licensed acupuncturists affiliated with the plan.

(2) The health care organization shall establish guidelines for acupuncture care in consultation with affiliated acupuncturists who are participants in the health care organization's utilization review process for acupuncture care, which may include qualified medical evaluators. The guidelines for acupuncture care shall, at a minimum, explicitly require the referral of any injured employee who so requests to an affiliated acupuncturist for the evaluation or treatment, or both, of neuromusculoskeletal conditions.

(3) Whenever a dispute concerning the appropriateness or necessity of acupuncture care for work-related injuries arises, the dispute shall be resolved by the health care organization's utilization review process for acupuncture care in accordance with the health care organization's guidelines for acupuncture care established by paragraph (2).

Acupuncture utilization review for work-related injuries shall be conducted in accordance with the health care organization's approved quality assurance standards and utilization review process for acupuncture care. Acupuncturists affiliated with the plan shall have access to the health care organization's provider appeals process and, in the case of acupuncture care for work-related injuries, the review shall include review by an acupuncturist affiliated with the health care organization, as determined by the health care organization.

(4) The health care organization shall inform employees of the procedures for processing and resolving grievances, including those related to acupuncture care, including the location and telephone number where grievances may be submitted.

(5) All guidelines for acupuncture care and utilization review shall be consistent with the standards of this code that require care to cure or relieve the effects of the industrial injury.

SEC. 71. Section 11604.5 of the Probate Code is amended to read:

11604.5. (a) This section applies when distribution from a decedent's estate is made to a transferee for value who acquires any interest of a beneficiary in exchange for cash or other consideration.

(b) For purposes of this section, a transferee for value is a person who satisfies both of the following criteria:

(1) He or she purchases the interest from a beneficiary for consideration pursuant to a written agreement.

(2) He or she, directly or indirectly, regularly engages in the purchase of beneficial interests in estates for consideration.

(c) This section does not apply to any of the following:

(1) A transferee who is a beneficiary of the estate or a person who has a claim to distribution from the estate under another instrument or by intestate succession.

(2) A transferee who is either the registered domestic partner of the beneficiary, or is related by blood, marriage, or adoption to the beneficiary or the decedent.

(3) A transaction made in conformity with the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code) and subject to regulation by the Department of Business Oversight.

(4) A transferee who is engaged in the business of locating missing or unknown heirs and who acquires an interest from a beneficiary solely in exchange for providing information or services associated with locating the heir or beneficiary.

(d) A written agreement is effective only if all of the following conditions are met:

(1) The executed written agreement is filed with the court not later than 30 days following the date of its execution or, if administration of the decedent's estate has not commenced, then within 30 days of issuance of the letters of administration or letters testamentary, but in no event later than 15 days prior to the hearing on the petition for final distribution. Prior to filing or serving that written agreement, the transferee for value shall redact any personally identifying information about the beneficiary, other than the name and address of the beneficiary, and any financial information provided by the beneficiary to the transferee for value on the application for cash or other consideration, from the agreement.

(2) If the negotiation or discussion between the beneficiary and the transferee for value leading to the execution of the written agreement by the beneficiary was conducted in a language other than English, the beneficiary shall receive the written agreement in English, together with a copy of the agreement translated into the language in which it was negotiated or discussed. The written agreement and the translated copy, if any, shall be provided to the beneficiary.

(3) The documents signed by, or provided to, the beneficiary are printed in at least 10-point type.

(4) The transferee for value executes a declaration or affidavit attesting that the requirements of this section have been satisfied, and the declaration or affidavit is filed with the court within 30 days of execution of the written agreement or, if administration of the decedent's estate has not commenced, then within 30 days of issuance of the letters of administration or letters testamentary, but in no event later than 15 days prior to the hearing on the petition for final distribution.

(5) Notice of the assignment is served on the personal representative or the attorney of record for the personal representative within 30 days of execution of the written agreement or, if general or special letters of administration or letters testamentary have not been issued, then within 30 days of issuance of the letters of administration or letters testamentary, but in no event later than 15 days prior to the hearing on the petition for final distribution.

(e) The written agreement shall include the following terms, in addition to any other terms:

(1) The amount of consideration paid to the beneficiary.

(2) A description of the transferred interest.

(3) If the written agreement so provides, the amount by which the transferee for value would have its distribution reduced if the beneficial interest assigned is distributed prior to a specified date.

(4) A statement of the total of all costs or fees charged to the beneficiary resulting from the transfer for value, including, but not limited to, transaction or processing fees, credit report costs, title search costs, due diligence fees, filing fees, bank or electronic transfer costs, or any other fees or costs. If all the costs and fees are paid by the transferee for value and are included in the amount of the transferred interest, then the statement of costs need not itemize any costs or fees. This subdivision shall not apply to costs, fees, or damages arising out of a material breach of the agreement or fraud by or on the part of the beneficiary.

(f) A written agreement shall not contain any of the following provisions and, if any such provision is included, that provision shall be null and void:

(1) A provision holding harmless the transferee for value, other than for liability arising out of fraud by the beneficiary.

(2) A provision granting to the transferee for value agency powers to represent the beneficiary's interest in the decedent's estate beyond the interest transferred.

(3) A provision requiring payment by the beneficiary to the transferee for value for services not related to the written agreement or services other than the transfer of interest under the written agreement.

(4) A provision permitting the transferee for value to have recourse against the beneficiary if the distribution from the estate in satisfaction of the beneficial interest is less than the beneficial interest assigned to the transferee for value, other than recourse for any expense or damage arising out of the material breach of the agreement or fraud by the beneficiary.

(g) The court on its own motion, or on the motion of the personal representative or other interested person, may inquire into the circumstances surrounding the execution of, and the consideration for, the written agreement to determine that the requirements of this section have been satisfied.

(h) The court may refuse to order distribution under the written agreement, or may order distribution on any terms that the court considers equitable, if the court finds that the transferee for value did not substantially comply with the requirements of this section, or if the court finds that any of the following conditions existed at the time of transfer:

(1) The fees, charges, or consideration paid or agreed to be paid by the beneficiary were grossly unreasonable.

(2) The transfer of the beneficial interest was obtained by duress, fraud, or undue influence.

(i) In addition to any remedy specified in this section, for any willful violation of the requirements of this section found to be committed in bad faith, the court may require the transferee for value to pay to the beneficiary up to twice the value paid for the assignment.

(j) Notice of the hearing on any motion brought under this section shall be served on the beneficiary and on the transferee for value at least 15 days before the hearing in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure.

(k) If the decedent's estate is not subject to a pending court proceeding under the Probate Code in California, but is the subject of a probate proceeding in another state, the transferee for value shall not be required to submit to the court a copy of the written agreement as required under paragraph (1) of subdivision (d). If the written agreement is entered into in California or if the beneficiary is domiciled in California, that written agreement shall otherwise conform to the provisions of subdivisions (d), (e), and (f) in order to be effective.

SEC. 72. Section 408 of the Revenue and Taxation Code is amended to read:

408. (a) Except as otherwise provided in subdivisions (b), (c), (d), (e), and (g), any information and records in the assessor's office that are not required by law to be kept or prepared by the assessor, disabled veterans' exemption claims, and homeowners' exemption claims, are not public documents and shall not be open to public inspection. Property receiving the homeowners' exemption shall be clearly identified on the assessment roll. The assessor shall maintain records which shall be open to public inspection to identify those claimants who have been granted the homeowners' exemption.

(b) The assessor may provide any appraisal data in his or her possession to the assessor of any county.

The assessor shall disclose information, furnish abstracts, or permit access to all records in his or her office to law enforcement agencies, the county grand jury, the board of supervisors or their duly authorized agents, employees, or representatives when conducting an investigation of the assessor's office pursuant to Section 25303 of the Government Code, the county recorder when conducting an investigation to determine whether a documentary transfer tax is imposed, the Controller, employees of the Controller for property tax postponement purposes, probate referees, employees of the Franchise Tax Board for tax administration purposes only, staff appraisers of the Department of Financial Institutions, the Department of Transportation, the Department of General Services, the State Board of Equalization, the State Lands Commission, the State Department of Social Services, the Department of Child Support Services, the Department of Water Resources, and other duly authorized legislative or administrative bodies of the state pursuant to their authorization to examine the records. Whenever the assessor discloses information, furnishes abstracts, or permits access to records in his or her office to staff appraisers of the Department of Business Oversight, the Department of Transportation, the Department of General Services, the State Lands Commission, or the Department of Water Resources pursuant to this section, the department shall reimburse the assessor for any costs incurred as a result thereof.

(c) Upon the request of the tax collector, the assessor shall disclose and provide to the tax collector information used in the preparation of that portion of the unsecured roll for which the taxes thereon are delinquent. The tax collector shall certify to the assessor that he or she needs the information requested for the enforcement of the tax lien in collecting those delinquent

taxes. Information requested by the tax collector may include social security numbers, and the assessor shall recover from the tax collector his or her actual and reasonable costs for providing the information. The tax collector shall add the costs described in the preceding sentence to the assessee's delinquent tax lien and collect those costs subject to subdivision (e) of Section 2922.

(d) The assessor shall, upon the request of an assessee or his or her designated representative, permit the assessee or representative to inspect or copy any market data in the assessor's possession. For purposes of this subdivision, "market data" means any information in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of that property, the date of the sale, and the consideration paid for the property, whether paid in money or otherwise. However, for purposes of providing market data, the assessor may not display any document relating to the business affairs or property of another.

(e) (1) With respect to information, documents, and records, other than market data as defined in subdivision (d), the assessor shall, upon request of an assessee of property, or his or her designated representative, permit the assessee or representative to inspect or copy all information, documents, and records, including auditors' narrations and workpapers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any penalties and interest thereon.

(2) After enrolling an assessment, the assessor shall respond to a written request for information supporting the assessment, including, but not limited to, any appraisal and other data requested by the assessee.

(3) Except as provided in Section 408.1, an assessee, or his or her designated representative, may not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.

(f) (1) Permission for the inspection or copying requested pursuant to subdivision (d) or (e) shall be granted as soon as reasonably possible to the assessee or his or her designated representative.

(2) If the assessee, or his or her designated representative, requests the assessor to make copies of any of the requested records, the assessee shall reimburse the assessor for the reasonable costs incurred in reproducing and providing the copies.

(3) If the assessor fails to permit the inspection or copying of materials or information as requested pursuant to subdivision (d) or (e) and the assessor introduces any requested materials or information at any assessment appeals

board hearing, the assessee or his or her representative may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of continuance.

(g) Upon the written request of the tax collector, the assessor shall provide to the tax collector information for the preparation and enforcement of Part 6 (commencing with Section 3351). The tax collector shall certify to the assessor that he or she needs the contact information to assist with the preparation and enforcement of Part 6 (commencing with Section 3351). The assessor shall provide the information, which may not include social security numbers. Any information provided to the tax collector pursuant to this subdivision shall not become a public record and shall not be open to public inspection. The tax collector shall reimburse the assessor for the actual and reasonable costs incurred by the assessor for providing the information to administer this subdivision. The tax collector shall add the costs described in the preceding sentence to the assessee's delinquent taxes and include the costs incurred subject to Sections 4112 and 4672.2. The tax collector or his or her designated employee shall, under penalty of perjury, certify to the assessor that he or she needs the information to assist with the preparation and enforcement of Part 6 (commencing with Section 3351), and that the information provided pursuant to this subdivision that is not public record and that is not open to public inspection shall not become public record and shall not be open to public inspection.

SEC. 73. Section 22005.1 of the Welfare and Institutions Code is amended to read:

22005.1. (a) The State Department of Health Care Services shall only certify a long-term care insurance policy that substantially meets the requirements of Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code, except the requirements of Sections 10232.1, 10232.2, 10232.8, 10232.9, and 10232.92 of the Insurance Code, and that provides all of the items specified in subdivision (b). The State Department of Health Care Services shall only certify a health care service plan contract that has been approved by the Department of Managed Health Care pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code as providing substantially equivalent coverage to that required by Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code, and that provides all of the items specified in subdivision (b). Policies issued by organizations subject to the Insurance Code and regulated by the Department of Insurance shall also be approved by the Department of Insurance.

(b) Only policies and contracts that provide all of the following items shall be certified by the department:

(1) Individual assessment and case management by a coordinating entity designated and approved by the department.

(2) Levels and durations of benefits that meet minimum standards set by the State Department of Health Care Services pursuant to Section 22009.

(3) Protection against loss of benefits due to inflation.

(4) A periodic record issued to the insured including an explanation of insurance payments or benefits paid that count toward Medi-Cal asset protection under this division.

(5) Compliance with any other requirements imposed by regulations adopted by the State Department of Health Care Services or the State Department of Social Services and consistent with the purposes of this division.

O